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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 316

SWIFT & COMPANY,

Petitioner,

vs.

RECONSTRUCTION FINANCE CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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No.

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RECONSTRUCTION FINANCE CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Swift & Company, petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above entitled cause on June 21, 1950, reversing the judgment of the District Court for the Northern District of Illinois.

Opinions Below.

The opinions of the District Court (R. 60-73; 719-728) are reported at 79 F. Supp. 546, and 81 F. Supp. 629. The majority opinion of the Court of Appeals, and the dissenting opinion of one judge, are not yet reported but may be found in the record (R. 752-759).

Jurisdiction.

The judgment of the Court of Appeals for the Seventh Circuit was entered on June 21, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1254.

Questions Presented.

1. Whether a subsidy paid to slaughterers of livestock under controlling directives of the Office of Economic Stabilization and respondent's "Livestock Slaughter Payments Regulation", which was paid to slaughterers "on account of the slaughter of livestock", which was measured in dollar amount by the live weight of the livestock slaughtered, and the payment benefits of which were specifically required to be passed back by the slaughterer to the livestock producer, was one "relating to the production or sale of agricultural commodities" [*i.e.*, livestock] as provided by Section 2(m) of the Price Control Act, so as to confer jurisdiction on the District Court pursuant to the terms of that Section.

2. Whether the decision of the Court of Appeals has the practical effect of substantially reading Section 2(m) out of the Price Control Act.

3. Whether "Announcement No. 1 under Regulation No. 10," which was issued by respondent under Section 7003.11 of Regulation No. 10 authorizing the issuance of interpretations or statements of agency policy, which was not in the form or terms of a regulation, which was not an amendment to any existing regulation, and which was never published in nor filed with the Federal Register contrary to respondent's usual practice and contrary to the publication requirements of Section 3 of the Administrative Procedure Act, was a "regulation or order" issued under Section 2 of the Price Control Act,

and thus reviewable exclusively by the Emergency Court of Appeals under Section 204(d) of that Act, or whether it was an agency interpretation or announcement of agency policy, the validity of which was a matter within the jurisdiction of the District Court under 28 U. S. C. 1331, and the Federal Declaratory Judgment Act.

4. Whether judicial consideration by federal district courts of agency action imposing a condition on the payment of livestock slaughter subsidies unauthorized by applicable directives and regulations may be foreclosed and frustrated by characterizing such action as *in effect* a "regulation or order" so as to bring the agency action by that device within the exclusive jurisdiction of the Emergency Court of Appeals.

5. Whether the afterthought retroactive subsidy payments forfeiture and recapture program upon which respondent embarked on March 31, 1947, approximately six months after the termination of price controls and the livestock slaughter subsidy program, came within Section 2(m) of the Price Control Act by imposing upon the payment of the subsidies in question "conditions or penalties not authorized by the provisions of the Act or * * * regulations" authorizing such subsidies.

6. Whether respondent's subsidy payments forfeiture and recapture program retroactively impaired petitioner's accrued vested rights to livestock slaughter subsidies in contravention of the Fifth Amendment to the Constitution of the United States.

Statute, Directive, Regulation, and Announcement Involved.

The pertinent provisions of the Emergency Price Control Act of 1942 as amended (50 U. S. C. App. 901 *et seq.*), of the applicable directive, regulation, and Announcement No. 1 are set forth in the appendix to this Petition, infra, pp. i to xii.

STATEMENT.

The Nature of the Case.

This is a civil action brought by petitioner pursuant to Section 2(m) of the Price Control Act as amended for declaratory judgment and other appropriate relief (R. 2-5). The ultimate question presented is the right of petitioner to recover unpaid livestock slaughter subsidies (and to retain subsidy payments paid to it by RFC prior to the commencement of suit) with respect to inventory on hand upon termination of price control at 12:01 A.M., October 15, 1946, resulting from animals slaughtered in reliance upon and pursuant to the livestock slaughter subsidy program in effect under the Price Control Act and appropriate directives and regulations during the period September 1, 1946 to October 15, 1946. Slaughtering by petitioner and other slaughterers continued as contemplated by the Act and the regulations up to the time of decontrol. Necessarily, a portion of the carcasses and meat products derived from the slaughtering operations carried on during the period of price control, was on hand when decontrol went into effect. Slaughter subsidy claims were filed in due course as provided in the regulations in effect at the time of decontrol. The claims were paid in substantial part in installments throughout the balance of the year 1946.

Several months after the last installment payment was made on subsidy claims covering slaughtering during the September-October period, and commencing with an informal announcement labeled "Announcement No. 1" issued March 31, 1947, without any action on the part of Congress in that regard, and although the statutes and regulations under which the livestock subsidy program had been carried on and the slaughtering operations conducted had long since terminated and expired, respondent undertook to effect a retroactive forfeiture of livestock slaughter subsidy claims remaining unpaid, and a forfeiture and recapture of payments already made with respect to slaughter operations as to which inventory was still on hand at the time of decontrol on October 15, 1946.

Petitioner commenced this action upon receipt from RFC on April 29, 1947 of a written demand that it file a report with RFC by July 31, 1947 reflecting the amount of livestock slaughter subsidy payments theretofore received by it which RFC sought to invalidate and recapture by Announcement No. 1. The demand recited that any slaughterer who failed to file the report and surrender and forego subsidy payments on the inventory in question would suffer the penalty of a forfeiture of *all* livestock slaughter claims for slaughtering had over the *entire* September-October 1946 period when the subsidy program was in effect under the Extension Act of 1946. The demand also threatened action on the part of the Department of Justice.

Petitioner invoked the jurisdiction of the District Court pursuant to Section 2(m) of the Price Control Act which provides that no agency or department of the Government in the payment of sums authorized by the Price

Control Act or other acts of Congress relating to production or sale of agricultural commodities "shall impose any conditions or penalties not authorized by the provisions of the Act or Acts or lawful regulations issued thereunder, under which such sums are authorized * * *." The section then provides that any person aggrieved by "any action" or failure to act of "any" Government agency contrary to the provisions of Section 2(m) "may petition the district court of the district in which he resides or has his place of business for an order or a declaratory judgment to determine whether any such action or failure to act is in conformity with the provisions of" Section 2(m), or "is otherwise lawful," and giving the Court jurisdiction "to grant appropriate relief."

The complaint prayed for a declaratory judgment finding and declaring the action of RFC to be not in conformity with the Price Control Act, the controlling directives, and respondent's Regulation No. 10; that RFC be restrained from further enforcing its program of forfeiture, penalty and coercion; and that respondent be ordered to pay petitioner the $221,861.51 balance of livestock slaughter subsidy claims due it.

Respondent (R. 44-45) admitted the factual allegations of the complaint, denied that its Announcement No. 1 was invalid, and affirmatively averred that "Announcement No. 1 under Regulation No. 10" was itself a "regulation" and that therefore the trial court was without jurisdiction because of Section 204(d) of the Price Control Act providing that the "Emergency Court of Appeals shall have jurisdiction to determine the validity of any regulation or order issued under Section 2 * * *," and withdrawing power from all other courts to consider the validity of any such regulation.

The Livestock Slaughter Subsidy Program.

A brief consideration of the livestock slaughter subsidy program is required, since the operation of the livestock slaughter subsidy program and its purpose and intent are determinative of the applicability of Section 2(m), as well as the question of whether Announcement No. 1 was in fact a regulation or order.

The program was based on Section 2(e) of the Price Control Act (50 U. S. C. App. 902(e)) which provided for and authorized the payment of *production* subsidies in the following language:

> "Whenever the Administrator determines that the maximum necessary production is not being obtained or may not be obtained during the ensuing year he may * * * make subsidy payments to domestic producers of such commodity in such manner and upon such terms and conditions as he determines to be necessary to obtain the necessary production thereof."

The Livestock Slaughter Payments Regulations.

The livestock slaughter subsidy program was initiated on June 7, 1943 by Regulation No. 3 of Defense Supplies Corporation (8 F. R. 10826), in response to the so-called hold-the-line order of the President (E. O. 9328, 8 F. R. 4681), which resulted in a reduction by 10% of ceiling prices on meats derived from livestock at both the retail and wholesale levels.[1] It was specifically determined by the Director of Economic Stabilization that

[1] Amd't No. 15, R.M.P.R. 169, 8 F.R. 7675; Amd't. No. 5, R.M.P.R. 148, 8 F.R. 7671; Amd't. No. 4, R.M.P.R. 239, 8 F.R. 7679.

the effect of the roll-back should not result in lower prices for livestock sold by the producer to slaughterers.[2] Accordingly, Defense Supplies Corporation was authorized to pay to livestock slaughterers a subsidy approximating the 10% roll-back, so that the slaughterer in turn would be able to pass back the payment benefits to the producers by thus being enabled to continue to pay the same prices for live cattle.

To supplement the admittedly inadequate controls over the prices at which the producer sold livestock to the slaughterer, and in particular to implement enforcement of the requirement that the payment benefits of the livestock slaughterer subsidy be passed back to the producer, the Director of Economic Stabilization issued a new and comprehensive overall directive on October 25, 1943. (8 F.R. 14641; App., this Pet., pp. ii to x infra.) This directive is the keystone of the livestock stabilization program, and is the basic directive insofar as the case at bar is concerned.

The directive of October 25, 1943 established a maximum-minimum range of prices governing the sales of livestock by the producer to the slaughterer.

If livestock purchases were made above or below the range of prices thus established, then deductions were made from subsidy payments. The directive contained no provisions respecting or affecting price ceilings on meat or other commodities processed from the purchased livestock. The directive recited that it was designed to insure "(a) That the livestock slaughter payments made with respect to cattle under Regulation 3 of Defense Supplies Corporation * * * *inure to the benefit of cattle*

[2] See Statement of Director of Economic Stabilization, this Petition, pp. 9 to 10 infra.

producers''; "(b) That such payments are made only to the extent necessary to maintain *live cattle* prices within a range consistent with the purposes of the stabilization and production programs''; "(c) To insure the maximum *production* of cattle''; and (d) to make certain "That available supplies of *live* cattle are equitably distributed among slaughterers and feeders.'' 8 F.R. 14641.)[3]

The statement of consideration issued in connection with the October 25, 1943 directive (Office of War Information Release 2652) contained the following apt description of the subsidy program:

> "Since May, 1942, beef prices have been subject to control at wholesale and retail. On December 16, 1942, uniform dollars-and-cents prices were established by zones throughout the country for beef carcasses and wholesale cuts. Based upon these regionally uniform wholesale prices, uniform dollars-and-cents retail prices were established in May, 1943. As part of the Government's program for reducing the cost of living to the general level of September 15, 1942, the wholesale and retail prices of beef were reduced by approximately 10 per cent in June of 1943. In order that this reduction might not threaten the production of live stock by unduly reducing the return to the producer, the price reduction was accompanied by the institution of an equalized payment to slaughterers, enabling them to continue to pay the same prices for live cattle.''
>
> * * *
>
> "The Director has considered the possibility of establishing both price ceilings and support prices for live cattle. The present directive, while avoiding

[3] Subsequent directives (amendments and extensions) extended the program to other livestock, namely, sheep, lambs, hogs, pigs and calves.

the disadvantages of a formal price regulation or support price program, seeks to accomplish the purpose of both. This it does by requiring deductions from subsidy payments in the case of any slaughterer whose monthly payments for live cattle are either above or below the range of prices provided for in the directive."

This was the basic directive pursuant to which and in conformity with which the program of livestock subsidies was formulated. Its fundamental purpose and effect were never changed and were implemented and fortified by subsequent directives.[4]

Defense Supplies Corporation amended its Regulation No. 3 to effectuate the Directive of October 25, 1943 (9 F. R. 1820; 9 F.R. 1821). The amended regulation specifically required that the subsidy benefits be passed on and inure to the livestock producer. Section 7003.10(b) of the regulation provided for invalidation of any subsidy "claim of any applicant who fails to pass on to persons from whom he purchases livestock the benefits secured from payments under this regulation." In addi-

[4] See e.g., Directive 28 (10 F.R. 522, January 10, 1945), establishing overriding ceiling prices on sales of live cattle; Directive 31 (10 F.R. 1336, January 30, 1945), strengthening controls over slaughtering of non-federally inspected plants; Directive 38 (10 F.R. 3132, March 21, 1945), providing for payment of extra-compensation subsidies on livestock slaughter; Directive 41 (10 F.R. 4494, April 23, 1945), which became the operating directive for the livestock stabilization program; Directive 48 (10 F.R. 5858, May 21, 1945), amendatory of directive 41, and changed rates of payment on slaughter of cattle, calves, sheep, lambs, hogs, and pigs; Directive 56 (10 F.R. 7117, June 9, 1945), related to eligibility of slaughterers to receive subsidies; Directive 70 (10 F.R. 9478), authorized the discontinuance of subsidies on sheep and lambs slaughtered on and after August 5, 1945; Directive 90 (10 F.R. 14743, December 4, 1945), provided a special subsidy for slaughter of livestock.

tion, Revised Regulation No. 3, by way of implementing the overriding directives adverted to above, provided that the amount of the subsidies was to be calculated on the live weight of the livestock slaughtered and that the subsidies were to become due and owing at the time of slaughtering the livestock.

Suspension of Price Control on June 30, 1946.

The subsidy program continued until June 30, 1946, when the Emergency Price Control Act of 1942, as amended, expired by its own terms, by reason of the Presidential veto of a bill to extend that Act. The entire price control program, including the livestock slaughter subsidy program, terminated on that date. Respondent honored all subsidy claims for all livestock slaughtered up to June 30, 1946, despite the fact that the meats processed therefrom were sold during the period July 1, 1946-September 1, 1946 at uncontrolled prices. Instead of instituting a recapture program such as the one formulated in Announcement No. 1, respondent affirmatively recognized petitioner's right to a subsidy on all livestock slaughtered up to June 30, 1946, without regard as to whether the meats processed therefrom were sold at uncontrolled prices. Respondent specifically "announced" as follows:

> "Statutory authority under which livestock slaughter payments are made by R.F.C. expires June 30, 1946. No payments will be made by R.F.C. on slaughter after June 30, 1946, unless new legislation is effective in the interim."

Restoration of the Subsidy Program upon Enactment of the Price Control Extension Act of July 25, 1946.

On July 25, 1946, the Price Control Extension Act became law. The Price Decontrol Board established by that

Act authorized the recreation of the entire livestock stabilization program on August 20, 1946. (11 F.R. 9138.) The Director of Economic Stabilization issued his Directive No. 130 on August 23, 1946 (11 F.R. 9375), reissuing and reestablishing the basic directives on a finding that such reissuance "is necessary to insure the maximum necessary production and distribution *of livestock and its products,* * * *." Respondent issued its Livestock Slaughter Payments Regulation No. 10 (R. 6) on August 28, 1946, effective as of September 1, 1946, which incorporated the provisions of Revised Regulation No. 3 (R. 7-25) by reference. Respondent began the payment of livestock subsidies on the slaughter of all livestock occurring on and after September 1, 1946.

Decontrol October 15, 1946.

Effective October 15, 1946, without prior notice to petitioner, price and related controls were removed from practically all commodities then under control, including the termination of the livestock slaughter subsidy program and the removal of all price controls on the sale of livestock and products processed therefrom.

Petitioner submitted its claims for livestock slaughtered by it during the period September 1, 1946-October 14, 1946. Respondent paid all of such claims on October 26, December 22 and December 23, except for a balance of $221,861.51. The claims thus honored, in part covered slaughter operations which resulted in inventory on hand at the close of business October 14, 1946, which fact was known to R.F.C. (R. 734.) On January 3, 1947, respondent issued a public statement that Regulation No. 10 had expired October 15, 1946 .(12 F. R. 66.)

On March 31, 1947, five and one-half months after the termination of the livestock slaughter subsidy program

on October 15, 1946, and three months after respondent's declaration that Regulation No. 10 had expired October 15, 1946, respondent, abruptly and without prior warning or intimation, issued its "Announcement No. 1 under Regulation No. 10." (R. 32-33.) By this "Announcement" respondent sought to effect a disallowance of unpaid subsidy claims and a recovery of subsidy payments theretofore made on slaughter operations as to which meat inventory remained on hand on October 15, 1946.

Under date of April 29, 1947, respondent issued an implementing letter directed to subsidy claimants. (R. 34.) The forms prescribed by respondent required the use of an artificial and arbitrary formula prescribed by RFC to attempt to reconstruct what the slaughterer's meat inventory might have been on October 15, 1946. (R. 35-40.) On the basis of the supposed meat inventory thus calculated, an additional arbitrary formula was required to be applied to reconstruct the live weight livestock equivalent thereof, and from that, the subsidy payments to be recaptu.ed. The announcement provided that if a slaughterer failed or refused to file the form, respondent would impose a "penalty" of requiring a forfeiture of the slaughterer's entire subsidy claims for September and October, 1946. In that connection, this letter also stated that "you may elect to forfeit that claim and no further penalty will apply."

Plaintiff instituted this proceeding in the District Court shortly after receipt of the letter of April 29, 1947.

The Decision of the District Court.

The District Court found the issues of fact and law in favor of petitioner (R. 728-735). It filed two opinions in support of its findings and conclusions. (R. 60-73, 79 F. Supp. 546; R. 719-728, 81 F. Supp. 629.)

The Court rejected respondent's basic argument that the subsidy was a "meat subsidy" rather than a subsidy "relating to the production or sale of an agricultural commodity." The Court emphasized that the controlling directives and regulations required that the benefits of the subsidy inure to the livestock producer; and that the "slaughterer was merely the medium through which the benefit of the subsidy reached the producer, the entire program being designed in order not to depress the ceiling prices of the *producer*, and so as to maintain his production incentive." (R. 67.) The Court pointed out that (R. 67):

> "The subsidy was to be paid not to the consumer, not to the retailer, not to the wholesaler, not on meat inventories of the slaughterers, but was to be paid to the slaughterer for the killing of the live animal, and from which payment the producer had already secured the benefit at the time the slaughterer purchased the livestock from him. The directive provided that the slaughterer was to be reimbursed when he slaughtered the livestock for which he had passed on to the producer the subsidy benefits, as required by Section 7003.10(b). What the producer received was as much a livestock subsidy as if the Government itself had made the payment directly to the producer."

The District Court rejected respondent's contention that there should be read into the Directives and the Livestock Slaughter Payments Regulations a so-called "inherent" but unexpressed condition that the "subsidies would be paid only upon such meat and meat products as were sold by slaughterers at controlled prices." That Court emphasized the consistent administrative treatment of respondent to the contrary, and held the subsidy to be a livestock producer's subsidy rather than a meat subsidy.

The District Court accordingly held that respondent was attempting to impose "conditions or penalties not authorized by the provisions of the Act or Acts, or lawful regulations issued thereunder" [*i.e.*, the controlling directives and respondent's Regulations Nos. 3 and 10]; and that the subsidy involved was one "relating to the production or sale of agricultural commodities." The Court accordingly found that it had jurisdiction under Section 2(m), and that respondent's "Announcement No. 1" and implementing letter of April 29, 1947 were conditions or penalties not authorized by the basic acts or lawful regulations issued thereunder. The Court also found that the Announcement and the letter were not regulations or orders within the meaning of Section 204(d), and that it accordingly had jurisdiction under the general grant of power contained in 28 U.S.C. 1331.

The Opinion of the Court of Appeals.

The Court of Appeals for the Seventh Circuit, with one Judge dissenting, held that the District Court was without jurisdiction.

Unlike the District Court, the majority opinion did not analyze or set forth the history, mechanics or purpose of the livestock slaughter subsidy program and the applicable directives.

Furthermore, the majority opinion confused petitioner's contentions with respondent's. The majority erroneously stated petitioner's contention to be whether a "meat subsidy" fell within Section 2(m), in the face of petitioner's consistent position to the contrary, that the livestock slaughter subsidy was for the benefit of the livestock producer and was not a "meat subsidy." The Court said (R. 754):

> "It will be observed that Section 2(m) * * * is confined to 'the payment of sums * * * relating to

REASONS FOR GRANTING THE WRIT.

I.

The Court Of Appeals Decided Federal Questions Of General Importance Which Have Not Been But Should Be Reviewed By This Court.

The majority of the Court of Appeals in holding (1) that Section 2(m) of the Price Control Act was inapplicable to the subsidy here involved, and (2) that respondent's "Announcement No. 1" was *in effect* a "regulation" issued under Section 2 of the Price Control Act, determined federal questions of general importance which merit review by this Court.

The General Importance Of The Decision To The Packing Industry.

The packing industry, which is one of the largest and most vital industries in the country, has a direct and substantial interest in the eventual outcome of this litigation. There were at least 4,000 commercial slaughterers in the industry in 1946.[5] The recapture and subsidy invalidation program of respondent found to be unlawful by the District Court in the case at bar thus relates not only to this petitioner, but to each of these 4,000 commercial slaughterers which had meat inventory on hand at the termination of the livestock slaughter subsidy program effective October 15, 1946, and were not excepted from

[5] Statement of George M. Lewis, Director, Dep't of Marketing, American Meat Institute, before Senate Committee on Agriculture and Forestry, 79th Cong. 2nd Sess. (1946).

Announcement No. 1.[6] Although the amount of subsidy sought to be recaptured is not capable of accurate computation for either petitioner or the industry as a whole, it is very substantial.[7]

The General Importance Of The Decision With Respect To Pending Cases.

The decision of the Court of Appeals is also of general importance in the light of cases pending in the federal district courts which involve the same issues presented by the case at bar both with respect to the merits of the case and to petitioner's claim of jurisdiction under Section 2(m).[8] In addition, cases involving the application and interpretation of Section 2(m) as applied to aspects of the livestock slaughter subsidy program other than the legality of Announcement No. 1 also are currently pending in various courts.[9]

The Wide Variance Of Opinion As To The Proper Interpretation Of Section 2(m).

The wide diversity and conflict of opinion expressed in the decided cases as to the proper application of Section

[6] The only exception contained in Announcement No. 1 related to packers whose slaughter of livestock for the combined months of May, June, and September, 1946 totalled 500,000 pounds of livestock or less.

[7] For example, petitioner's claims for livestock production subsidies for the period September 1, 1946-October 14, 1946 aggregated $1,526,429.02.

[8] **Armour & Co. v. R.F.C.**, No. 47 C 960 (N.D. Ills.); **Cudahy Packing Co. v. R.F.C.**, No. 47 C 1039 (N.D. Ills.); **Safeway Stores v. R.F.C.**, No 28462-G (N.D. Cal.); **Purity Stores, Ltd., v. R.F.C.**, No. 29246-E (N.D. Cal.).

[9] **Riverview Packing Co. v. R.F.C.**, No. 9775 (D.N.J.); **Vetch v. R.F.C.**, No. 407 (E.D. Wash.); **Ullacia v. R.F.C.**, No. 2265 (W.D. Wash.); **Miller v. R.F.C.**, No. 2266 (W.D. Wash.); **Hall v. R.F.C.**, No. 2267 (W.D. Wash.); **McKillip v. R.F.C.**, No. 5277 (D. Ore.)

2(m) to the livestock slaughter subsidy directives and regulations emphasize the general importance of review by this Court of the decision in the case at bar.

The decision of the Court of Appeals is the first to our knowledge to hold Section 2(m) inapplicable where a subsidy claimant contends that respondent has imposed a condition on the payment of livestock slaughter subsidy claims not authorized by the livestock slaughter directives and regulations, and is directly contrary to decisions of district courts in other circuits, including one decision which was handed down after the decision in the case at bar. See e. g., *Riverview Packing Co.* v. *R. F. C.*, No. 9775 (D. N. J., July 28, 1950), opinion, Appendix, this Pet. pp. vii to xii; *Katz* v. *R. F. C.*, (W. D. Cal., 1945), appeal dismissed, 156 F. 2d 215 (C. A. 9, 1946).

Furthermore, in cases in which the attack was directed against respondent's regulation or the overriding directives, courts have given full effect to both Section 2(m) and Section 2(d) by indicating that Section 2(m) would have applied had the applicant (as did petitioner in the instant case) sought recovery on the ground that R. F. C. had denied a claim for a reason not authorized by its basic regulations and the controlling directives.[10]

The suggestion has also been made that Section 2(m) goes so far as to confer jurisdiction on the district courts over challenges to the validity of respondent's livestock slaughter regulations themselves.[11]

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[10] **Illinois Packing Co. v. Defense Supplies Corp.**, 57 F. Supp. 8, 11-12 (N.D. Ill., 1944), affd., 156 F. 2d 875 (C.A. 7, 1946); **Illinois Packing Co. v. Bowles**, 147 F. 2d 554, 559-560 (E.C.A., 1945); **Samett v. R.F.C.**, 165 F. 2d 605, 607 (C.A. 10, 1948); **Bowles v. Crew**, 59 F. Supp. 809, 811 (S.D. Cal., 1945).

[11] Dissenting Opinion, **Samett v. R.F.C.**, 165 F 2d 605, 607-608 (C.A. 10, 1948).

At the other extreme, there are dicta in actions challenging respondent's Livestock Slaughter Payments Regulation No. 3, that whether the attack was directed at the basic regulation itself, or merely agency action under it, Section 2(m) would be unavailable on the ground that the livestock slaughter subsidy was not a subsidy "relating to the production or sale of agricultural commodities" but was a "meat subsidy."[12]

The General Importance Of The Decision That Agency Announcements Or Interpretations Are "In Effect" Regulations Or Orders.

The question is presented whether the Court expanded Section 204(d) to include agency action found to be "in effect" a "regulation or order", thereby giving an intent and purpose to Section 204(d) never contemplated by Congress when it enacted that Section as a part of the Price Control Act of 1942.

The decision of the Court of Appeals that Announcement No. 1 was "in effect" a "regulation or order" and that, apart from Section 2(m), the district courts had been deprived of jurisdiction by reason of Section 204(d) of the Price Control Act, forecloses judicial review by the district courts of any interpretation, announcement of agency policy, or action of respondent purporting to be under supposed authority of the controlling directives and its livestock slaughter subsidy regulations.

This matter has immediate and significant consequences apart from the livestock slaughter subsidy program, or the Price Control Act. For example, The Defense Pro-

[12] **Atlantic Meat Co. v. R.F.C., 166 F. 2d 51 (C.A. 1, 1948); Tambasco v. R.F.C., 178 F. 2d 283 (C.A. 2, 1949).**

duction Act of 1950,[13] continues the jurisdiction of the Emergency Court of Appeals and vests it with exclusive jurisdiction over challenges directed against "regulations or orders" issued under the Act, and withdraws jurisdiction from all other courts to consider such challenges. These jurisdictional provisions follow the precise language of Section 204(d) of the Price Control Act.[14]

II.

In Determining That The District Court Did Not Have Jurisdiction Under Section 2(m) Of The Price Control Act, The Court Erroneously Decided A Federal Question Of General Importance Which Has Not Been But Should Be Reviewed By This Court.

The majority of the Court of Appeals, unlike the Judge of the District Court, made no mention in its opinion of the history, purpose, intent, and mechanics of the livestock slaughter subsidy program. Rather, the Court predicated its entire decision on the wholly erroneous assumption that petitioner contended that the livestock slaughter subsidy was one on meats processed from livestock—*i. e.*, a

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[13] Pub. L. No. 774, 81st Cong., 2nd Sess. (1950).

[14] Section 408(d) of the Defense Production Act reads in part as follows:

> "The Emergency Court of Appeals and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under this title, and of any provision of any such regulation or order. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, or order, or to stay, restrain, enjoin or set aside, in whole or in part, any provision of this title authorizing the issuance of such regulation or order, or any provision of any such regulation or order, or to restrain or enjoin the enforcement of any such provision."

consumer's subsidy. This contention was respondent's. Petitioner's contention was directly the opposite—that the livestock slaughter payments were for the benefit of the livestock producer.

1. The history, mechanics, and declared purposes of the livestock slaughter subsidy program were considered at length by the District Court and have been heretofore summarized. (Statement, pp. 7 to 11 *supra*.) The conclusion that the subsidy was for the benefit of the livestock producer seems inescapable. The slaughterer was paid the subsidy computed on the live weight of the cattle slaughtered, to compensate him for the higher prices which he had already paid to the producer. Respondent's livestock slaughter payments regulations expressly declared that slaughterers' claims would be invalidated for failure to pass back benefits of the subsidy to the livestock producers (Section 7003.10(b)). This provision merely recognized and gave effect to the purpose and intent of the livestock slaughter subsidy program. The benefits received by the livestock producer were as much a livestock subsidy as if the Government itself had made the payment directly to the producer. The livestock slaughter subsidy here involved was clearly a subsidy "relating to the production or sale of agricultural commodities," within the meaning of Section 2(m).

2. The Court of Appeals also failed to give effect to the considered use by Congress of the crucial phrase of Section 2(m), "relating to the production or sale of agricultural commodities." Whatever else may be said of the subsidy here involved, it is certainly one "relating" to the "production or sale" of livestock. The subsidy "relates" to "production" of livestock because it was designed to encourage the production of livestock, and because it was intended and was in fact for the benefit of

producers of livestock. It "relates" to the "sale" of livestock because the producer was required to sell, and the slaughterer was required to buy livestock, at the price ceilings and within the price ranges provided in the subsidy directives and regulations; because the producer received the benefit of the subsidy through and by means of the livestock sale and purchase transaction; because it was designed to afford price support to the livestock producer; and because it was designed to induce the livestock producer to sell and the slaughterer to buy livestock in normal and legitimate channels.

3. The practical effect of the decision of the Court of Appeals is substantially to read Section 2(m) out of the statute. Yet Congress, in enacting Section 2(m) in 1944 as an amendment to the Price Control Act, intended that it should be given full effect, and that it should apply to subsidy paying agencies, including respondent.[15] However, as construed by the Court of Appeals, Section 2(m) has no conceivable applicability or effect. Clearly such a totally erroneous construction should not be permitted to stand.

4. The opinion of the Court of Appeals in the case at bar is, to our knowledge, the first decision holding Section 2(m) inapplicable in an action in which a livestock slaughter subsidy claimant relies on (rather than attacks) respondent's basic regulation and the controlling directives, and contends that respondent's actual or threatened invalidation of subsidy claims is not authorized by or permitted by the basic regulations and Acts. All other decisions squarely on this point have held that jurisdiction was conferred by Section 2(m) in this class of cases. *Riverview Packing Co. et al.* v. *R.F.C.*, No. 9775 (D.N.J., 1950) (opin-

[15]See e.g., statements of Senator Taft (90 Cong. Rec. 5929, 5295); Senator Wagner (90 Cong. Rec. 6449-6452).

ion found in this Petition, (App. pp. vii to xii *infra*); *Katz* v. *R.F.C.*, (W.D. Cal., 1945), *appeal dism.*, 156 F. 2d 215 (C.A. 9, 1946). Opinions of other courts have given full and required effect to Section 2(m) and Section 204(d), by agreeing that Section 2(m) is applicable if the attack by the livestock slaughter subsidy claimant is not directly upon the basic regulations, but rather at action by R.F.C. alleged to be unauthorized by the basic Acts or lawful regulations issued thereunder. *Illinois Packing Co.* v. *Defense Supplies Corp.*, 57 F. Supp. 8, 11-12 (N.D. Ill., 1944), aff'd., 156 F. 2d 875 (C.A. 7, 1946); *Illinois Packing Co.* v. *Bowles*, 147 F. 2d 554, 559-560 (E.C.A., 1945); *Samett* v. *R.F.C.*, 165 F. 2d 605, 607 (C.A. 10, 1948); *Bowles* v. *Crew*, 59 F. Sup. 809, 811 (S.D. Cal., 1945).

5. The three authorities relied on by the Court of Appeals do not support its decision. *Atlantic Meat Co.* v. *R.F.C.*, 166 F. 2d 51 (C.A. 1, 1948); and *Tambasco* v. *R.F.C.*, 178 F. 2d 283 (C.A. 2, 1949), each concerned a direct attack on the validity of respondent's Regulation No. 3. Indeed the Court in the *Tambasco* case stated that Section 2 (m) "had application in cases where the plaintiff felt aggrieved at administrative action taken under the terms of the Act or under a valid regulation." Insofar as the opinions in these cases contain dicta that the livestock slaughter subsidy is not one "relating" to the "production" or "sale" of livestock, they are in conflict with better reasoned authority and fail to give effect either to the purpose, intent, and operation of the livestock slaughter subsidy program, or Congress' advised used in Section 2 (m) of the words "*relating*" and "*production* or *sale*" in the statutory phrase.

Superior Packing Co. v. *Clark*, 164 F. 2d 343 (E.C.A., 1947), did not involve any phase of the subsidy program, did not in any way or manner consider Section 2 (m), but was an action directly attacking the validity of ceiling

prices established by RMPR 169 (meat carcasses and wholesale cuts). The Court held that meats were a commodity processed from an agricultural commodity, and that approval of R.M.P.R. 169 by the Secretary of Agriculture was therefore not required.

III.

In Determining That Respondent's "Announcement No. 1 Under Regulation No. 10" And The Implementing Letter Of April 29, 1947 Were In Effect "Regulations Or Orders," The Court Erroneously Decided A Federal Question Of General Importance Which Has Not Been But Should Be Reviewed By This Court.

The Court of Appeals also determined that the Announcement and implementing letter were "in effect" regulations or orders issued under Section 2 of the Price Control Act, and concluded that the District Court had erred in holding that it had jurisdiction under 28 U.S.C. 1331 and the Federal Declaratory Judgment Act because of Section 204 (d) of the Price Control Act.

1. Congress, in Section 204(d), gave the Emergency Court of Appeals exclusive jurisdiction to review the validity of "regulations" or "orders" issued under Section 2 of the Price Control Act.[16] However, questions concerning agency determinations as to the applicability of the basic regulations, the validity of interpretations, announcements of general policy and other similar kinds of agency action fall within the jurisdiction of the District Courts and outside the grant of jurisdiction to the Emergency Court of Appeals. See, e.g., *Bowles* v. *Simon*, 145 F 2d 334 (C.A. 7, 1944); *Gordon* v. *Bowles*, 153 F 2d 614 (E.C.A., 1946). The soundness of this interpretation of Congressional intent is demonstrated by Section 2 (m),

[16] See e.g., **Yakus v. United States**, 321 U.S. 414 (1944).

in which Congress recognized that agency action which a claimant challenged as unauthorized by lawfully issued regulations relating to the subsidy program was not to be considered or characterized as a "regulation or order" so as to fall within the exclusive jurisdiction of the Emergency Court of Appeals.

2. The Announcement and letter amounted to nothing more than an agency statement interpreting powers which respondent thought had been conferred on it by the basic statutes, directives, and its Regulation No. 10. The documents are neither regulations nor orders. Neither is cast in the familiar terms or form of a regulation, order, or amendment thereto. Indeed the "Announcement" states that it is an Announcement "under Regulation No. 10." Neither was published in or filed with the Federal Register, contrary to respondent's invariable administrative practice. This omission is of significance for the further reason that Section 3 of the Administrative Procedure Act (5 U.S.C. 1001) requires the publication of all substantive rules and regulations. The failure of respondent to publish Announcement No. 1 or the letter in the Federal Register reflects a clear administrative intent that the Announcement and the implementing letter were not intended to be and were not in fact regulations or orders.

Furthermore, Regulation No. 10 specifically provides for the issuance of such an interpretation in the form of an "announcement." Section 7003.1 of Regulation No. 10 provides:

> "*Upon announcement of any* * * * *interpretation* issued hereunder any applicant may within thirty days apply to RFC for the right to modify or revise any claims theretofore filed which are affected by such decision or interpretation which accrued within a period of 90 days immediately preceding the first of

the month following the decision of the day when the decision or interpretation was announced." (Emphasis supplied.)

3. Congress, in enacting Section 204(d) of the Price Control Act, vested exclusive jurisdiction in the Emergency Court of Appeals only over the validity of "regulations or orders." This legislative intent may not be judicially expanded to embrace all agency action of any kind whatsoever purporting to be issued under authority of a "regulation or order" by dubbing such action as "in effect" a "regulation or order," and claiming that jurisdiction to review such action has been withdrawn from the federal district courts. So construed, it would be difficult to conceive of any agency action which would not be "in effect" a "regulation or order." Clearly, however, Congress never intended such consequences to attach to Section 204 (d) of the Price Control Act.

4. The authorities relied on by the Court of Appeals for its holding that the "Announcement" was a regulation or order, with possibly one exception, concerned either a direct attack on the validity of a basic and underlying regulation,[17] or an attack on a specific order of respondent denying a specific claim or claims of the subsidy applicant.[18]

The single exception is *Schluderberg-Kurdle Co.* v. *R.F.C.*, 169 F 2d 419 (E.C.A., 1948), discussed on its merits, this Pet., p. 32, *infra.* That case was not, however, a judicially contested determination on the issue of jurisdiction, in that complainant affirmatively invoked the jurisdiction of the Emergency Court by specifically alleging that Announcement No. 1 was a "regulation or

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[17] **Tambasco v. R.F.C.**, 178 F 2d 283 (C.A. 2, 1949).

[18] **Merchant's Packing Co. v. R.F.C.**, 176 F 2d 908 (E.C.A., 1949); **Duncan Coffee Co. v. R.F.C.**, 178 F 2d 926 (E.C.A., 1949).

order" issued under Section 2 of the Price Control Act, and respondent R.F.C. did not challenge this assertion of jurisdiction. Each side thus conceded that the Emergency Court of Appeals had jurisdiction over the action. And, the Emergency Court of Appeals specifically stated in its opinion that "our jurisdiction is not challenged." Notwithstanding this circumstance, for the reasons we have stated (which were, of course, neither argued to nor considered by the Emergency Court), the Emergency Court improperly assumed jurisdiction in the *Schluderberg-Kurdle* case since the "Announcement" was neither a regulation nor an order issued under Section 2 of the Price Control Act, but was an interpretation or announcement of agency policy issued under Section 7003.11 of respondent's regulation concerning the validity of which the Emergency Court had no jurisdiction.

IV.

The District Court Properly Held That The Course of Action Undertaken By Respondent On March 31, 1947 Was Without Authority In Any Act Or Lawful Regulation Presently Or Formerly In Existence Pursuant To Which The Subsidies In Question Were Payable, And Is In Violation Of The Express Provisions Of Section 2 (m) Of The Price Control Act.

Although the Court of Appeals did not reach the merits of petitioner's claim that the respondent's recapture program formalized in Announcement No. 1 was not authorized by the Act, or the lawful regulations issued thereunder, a brief recitation of the reasons causing the District Court to find the Announcement unlawful is pertinent, particularly since the merits of petitioner's claim have a direct if not decisive bearing on the jurisdictional aspects of the case at bar.

Respondent's consistent position has been that the recapture program embodied in its Announcement No. 1

merely expressed what had always been an "inherent" condition that no subsidies would be paid or honored on slaughter operations which resulted in inventory which was sold at uncontrolled prices. The decisive arguments requiring the rejection of this wholly untenable position may be summarized as follows:

1. The subsidy involved was a livestock production subsidy, not a meat subsidy; for the reasons heretofore set forth in this Petition. (Pet., pp. 7 to 10 and p. 23, *supra*).

2. All grounds which will cause the invalidation of subsidy claims are required to be set forth in the livestock slaughter subsidy regulations. Claims may not be invalidated for alleged "inherent" but "unexpressed" conditions. *Consolidated Flour Milling Co.* v. *R.F.C.*, 177 F 2d 209 (E.C.A., 1949); *Gibbs* v. *R. F. C.*, 169 F 2d 654 (E.C.A., 1948); *Belle City Packing Co.* v. *R.F.C.*, 169 F 2d 413 (E.C.A., 1948)

3. The controlling directives and respondent's own Livestock Slaughter Payments Regulations Nos. 3 and 10 contained and recited in detail all grounds by which subsidy claims might be invalidated or recaptured. The condition of payment recited in "Announcement No. 1" has never been set forth in any directive or regulation.

4. Both Regulations Nos. 3 and 10 expressly stated that subsidies would be paid on all livestock slaughtered up to the date of termination of the Regulation, by providing that:

> "* * * Such termination shall not preclude the filing of claims on account of livestock slaughtered on or before the date of termination * * *."

5. In every instance prior to the issuance of Announcement No. 1, subsidies were initiated on all livestock

slaughtered on or after a certain date, and when subsidies were discontinued, claims were paid for all livestock slaughtered up to and including the termination date without regard to the sale and disposition of the inventory on hand.

6. Faced with precisely the same situation as is presented by the case at bar, respondent, on the termination of controls on June 30, 1946, honored all subsidy claims for all livestock slaughtered up to and including June 30, 1946, without regard to the fact that the inventory was then sold at uncontrolled prices.

7. Not only did respondent honor all subsidy claims for livestock slaughtered up to and including June 30, 1946, but respondent specifically announced prior to that date that it would honor all such claims.

8. Respondent, on the reinstitution of the subsidy program effective September 1, 1946 paid subsidies for all livestock slaughtered on and after September 1, 1946. No claims were filed for nor were subsidies paid on the inventory on hand on that date, which inventory was derived from the slaughter of livestock purchased at inflationary prices during the period of decontrol from July 1, 1946—August 31, 1946.

9. Respondent honored petitioner's subsidy claims in an amount of $1,304,583.51 on livestock slaughtered from September 1, 1946 up to and including October 14, 1946, which in part resulted in inventory on hand on that date.

10. It was not until approximately six months after October 14, 1946 that respondent first stated its intention to recapture or invalidate subsidies on livestock slaughtered September 1, 1946-October 15, 1946, which resulted in inventory on hand, October 15, 1946.

11. Directive 41 of the Office of Economic Stabilization to which respondent must conform, was amended six times subsequent to October 15, 1946 and two times after the issuance of Announcement No. 1, but nothing contained in any such amendment ever authorized respondent to institute the program formalized in Announcement No. 1.

The decision of the Emergency Court of Appeals in *Schluderberg-Kurdle Co.* v. *R.F.C.*, 169 F 2d 419 (E.C.A., 1948), holding Announcement No. 1 to be valid, was decided by a Court without jurisdiction over the subject matter, and is clearly distinguishable because: (a) the subsidy claimant not only conceded but actually argued that the subsidy was a consumer's meat subsidy, rather than a producer's subsidy; (b) the Emergency Court set forth this concession in its opinion and regarded it as being of decisive significance; (c) the basic, controlling and all important directives were not called to the attention of the Court; (d) the significant administrative interpretations of the program were not called to the attention of the Court; and (e) the termination provisions of the Regulation were not placed in their proper light.

The decision of the Emergency Court of Appeals in the *Schluderberg-Kurdle* case is furthermore directly contrary in principle to subsequent decisions of that Court. See e.g., *Gibbs* v. *R.F.C.*, 169 F 2d 654 (E.C.A., 1948); *Belle City Packing Co.* v. *R.F.C.*, 169 F. 2d 413 (E.C.A., 1948); and *Consolidated Flour Milling Co.*, v. *R.F.C.*, 177 F 2d 206 (E.C.A., 1949).

V.

The District Court Properly Held Announcement No. 1 And The Implementing Letter Of April 29, 1947 To Be Invalid In That They Retroactively Impaired Vested Rights Of Petitioner To Accrued Livestock Slaughter Subsidy Payments In Violation Of The Fifth Amendment To The Constitution Of The United States.

Petitioner contended before the Court of Appeals that the Announcement retroactively impaired accrued vested rights of petitioner. Although the Court of Appeals failed to pass on this point, it is sound in principle and authority.

It has been recognized both legislatively as well as judicially that livestock slaughter subsidies are "obligations," not "gratuities." Section 6(d), Price Control Extension Act of 1946; *Illinois Packing Co.* v. *Snyder,* 151 F 2d 337, 339 (E.C.A., 1945); *Armour & Co.* v. *R.F.C.,* 162 F. 2d 918 (E.C.A., 1947). Petitioner slaughtered livestock in compliance with all of the conditions and provisions of Livestock Slaughter Payments Regulation No. 10. It had thus fulfilled all of the qualifications and conditions imposed by Regulation No. 10 upon its termination on October 15, 1946. Respondent, by its Announcement No. 1, is now seeking retroactively to forfeit certain subsidy claims which petitioner had already become entitled to and earned prior to the promulgation of the Announcement. This is in contravention of the Fifth Amendment to the Constitution of the United States. Judicial authority has long recognized that such rights arising under subsidy statutes cannot be thus retroactively invalidated. See, *e.g., Steamship Co.* v. *Joliffe,* 2 Wall. (69 U. S.) 450, 457-8; *Ettor* v. *Tacoma,* 228 U. S. 148; *Coombes* v. *Getz,* 285 U. S. 434; *Salt Co.* v. *East Saginaw,* 13 U. S. 372; *Calder* v. *Henderson,* 54 Fed. 802, 804-5 (C.A. 5, 1893).

CONCLUSION.

For the reasons stated it is respectfully submitted that the general importance of the issues decided by the Court of Appeals in the case at bar fully merits review by this Court. The petition for a writ of certiorari should therefore be granted.

Respectfully submitted,

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APPENDIX.

I.

Section 2(m), added by the Stabilization Extension Act of June 30, 1944 (50 U.S.C. App. 902(m)) as an amendment to the Emergency Price Control Act of 1942 (56 Stat. 23, 50 U.S.C. App. 901) reads as follows:

> "(m) No agency, department, officer, or employee of the Government, in the payment of sums authorized by this or other Acts of Congress relating to the production or sale of agricultural commodities, or in contracts for the purchase of any such commodities by the Government or any department or agency thereof, or in any allocation of materials or facilities, or in fixing quotas for the production or sale of any such commodities, shall impose any conditions or penalties not authorized by the provisions of the Act or Acts, or lawful regulations issued thereunder, under which such sums are authorized, such contracts are made, materials and facilities allocated, or quotas for the production or sale of any such commodities are imposed. Any person aggrieved by any action of any agency, department, officer, or employee of the Government contrary to the provisions hereof, or by the failure to act of any such agency, department, officer, or employee, may petition the district court of the district in which he resides or has his place of business for an order or a declaratory judgment to determine whether any such action or failure to act is in conformity with the provisions hereof and otherwise lawful; and the court shall have jurisdiction to grant appropriate relief. The provisions of the Judicial Code as to monetary amount involved necessary to give jurisdiction to a district court shall not be applicable in any such case."

Section 204(d) of the Price Control Act (50 U.S.C. App. 904(d)) reads as follows:

> "The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders

of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2 [section 902 of this Appendix], of any price schedule effective in accordance with the provisions of section 206 [section 926 of this Appendix], and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision."

II.

The Directive of October 25, 1943 (8 F. R. 14,641) reads as follows:

"§ 4004.1 Livestock slaughter payments. (a) The purposes of this section are to insure:

(1) That the livestock slaughter payments made with respect to cattle under Part 7003 of this title (Livestock Slaughter Payments) inure to the benefit of cattle producers;

(2) That such payments are made only to the extent necessary to maintain live cattle prices within a range consistent with the purposes of the stabilization and production programs;

(3) That such prices do not impose undue hardship upon any group of slaughterers whose output is needed to obtain the maximum necessary production; and

(4) That the available supplies of live cattle are equitably distributed among slaughterers and feeders.

(b) It is hereby determined that the stabilization and production programs require the maintenance of live cattle prices within the following ranges:

Grade:	Price (per cwt., at Chicago)
Choice	$15.00 to $16.00
Good	14.25 to 15.25
Medium	12.00 to 13.00
Common	10.00 to 11.00
Cutter and canner	7.45 to 8.45

The Price Administrator and the War Food Administrator are directed to determine and publish, and to certify to Defense Supplies Corporation, live cattle prices at points other than Chicago which are in line with the foregoing Chicago prices.

(c) There shall be deducted from the livestock slaughter payments hereafter made to any slaughterer under Part 7003 of this title the net amount, if any, by which the total of the prices paid by such slaughterer for all live cattle purchased during the month for which the payments are made either fell short of the total amount he would have paid at the lower of the applicable prices, or exceeded the total amount he would have paid at the higher of the applicable prices, set forth or provided for in paragraph (b) of this section.

The grade of live animals purchased by a slaughterer shall be determined on the basis of the carcass grade. The Price Administrator and the War Food Administrator are directed to determine and publish, and to certify to Defense Supplies Corporation, conversion factors for determining the dressed weight equivalents of live weights.

In the case of slaughterers who operate more than one plant, the amount of the payments and deductions to be made shall be determined separately for each plant.

(d) The livestock slaughter payments hereafter made with respect to cattle under Part 7003 of this

title to any slaughterer whose beef carcasses are graded by an official grader of the Food Distribution Administration shall be revised and computed on a grade basis as follows:

Grade:	Payments per live cwt.
Choice	$1.00
Good	1.45
Medium	.90
Common	.50
Cutter and Canner	.50
Bologna Bull	.50

Livestock slaughter payments made to slaughterers whose beef carcasses are not graded by an official grader of the Food Distribution Administration shall remain unchanged.

(e) Slaughterers who during the year 1942, or a representative portion thereof, sold and who currently sell 98% or more of the total dressed carcass weight of cattle slaughtered by them in the form of carcasses, wholesale cuts, frozen boneless beef (Army specifications) (carcass equivalent) or ground beef, shall be paid in addition to the payments authorized by Part 7003 of this title, the amount of $0.80 per cwt. of cattle slaughtered during the month for which such payments are made.

(f) Defense Supplies Corporation is directed to amend Part 7003 of this title in accordance with this section.

(g) The War Food Administrator is directed as soon as practicable to institute a system of allocation of live cattle to slaughterers and feeders which is adequate to maintain an equitable distribution of available supplies.

(h) The Secretary of Commerce is directed to determine on the basis of facts certified by the War Food Administration and the Office of Price Administration whether the effectuation of the expressed purposes of this directive require adjustments in, or additions to, the payments contemplated by this directive because of inequities resulting from differences in transportation costs.

(i) This directive shall become effective immediately, except that paragraphs (c) and (d) shall become effective on December 1, 1943, and payments under paragraph (e) shall be made with respect to cattle slaughtered on and after November 1, 1943."

III.

"Livestock Slaughter Payments Regulation No. 10, Reconstruction Finance Corporation" (R. 6) reads as follows:

"Section 7010.1. Reconstruction Finance Corporation shall make payments to eligible slaughterers on cattle, calves, hogs and pigs slaughtered on and after September 1, 1946, in accordance with all the terms and conditions of Livestock Slaughter Payments, Revised Regulation No. 3 of Reconstruction Finance Corporation, as amended by Amendments Nos. 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18.

Section 7010.2. Revised Regulation No. 3 Reconstruction Finance Corporation and Amendments Nos. 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 thereto are made a part of this regulation.

Section 7010.3. This regulation shall terminate automatically, without regard to the ten day notice provision of Section 7003.12 of Revised Regulation No. 3, on the failure of any condition required by law as a prerequisite to validity of a subsidy on livestock or meat.

This regulation shall become effective September 1, 1946. Issued this 28th day of August, 1946.

Stuart K. Barnes,
Executive Director, Office of Defense Supplies."

IV.

"Announcement No. 1 Under Regulation No. 10 of Reconstruction Finance Corporation" (R. 32-33) reads as follows:

> "The volume of meat held in inventories by slaughterers at the close of business on October 14, 1946 (the date of termination of price controls on meat) was substantial, and such inventories were, of course, sold thereafter at uncontrolled prices. The Office of Temporary Controls has determined that in view of the provisions of Section 6(a)(4) of the Price Control Extension Act of 1946 and in order to avoid unjust enrichment of packers at the expense of the Government, subsidies allocable to these inventories should be recaptured. Operation of the plan is as follows:
>
> I. De Minimis Cases. Because of the disportionate administrative burden in relation to the potential amounts involved the Government will not attempt to recapture such subsidies in the case of slaughterers who furnish information to the RFC showing that they did not slaughter in excess of 500,000 pounds total live weight of cattle, calves and hogs, combined during the period consisting of the May, June and September 1946 accounting periods. A form for the use of slaughterers falling in this class is attached hereto (RFC Form No. DSC 117). Such slaughterers must complete and file this form with RFC before April 30, 1947, unless they elect to have invalidated their September and October 1946 meat subsidy claims whether paid or unpaid. On receipt of the completed form showing slaughter of not more than a total of 500,000 pounds live weight of cattle, calves and hogs combined during the period consisting of the May, June and September 1946 accounting periods, RFC will pay any amounts otherwise due on the September and October 1946 claims.

II. Large Slaughterers. With respect to slaughterers who slaughtered in excess of 500,000 pounds during the May-June-September period the amount to be recaptured will be based on the amount of meat held in inventory at the close of business October 14, 1946, unless they elect to settle instead by foregoing their total subsidies for September and October 1946. A form to be used by such slaughterers in reporting their inventories or for the purpose of making this election will be furnished as soon as copies are available. Until the form is available, no further September and October subsidy payments can be made to any slaughterers in this category unless he had no inventory of meat or meat products at the close of business October 14, 1946.

With respect to all slaughterers, large or small, who have already received the September-October subsidy, if their cases are not settled pursuant to the procedures provided herein, they will be referred to the Department of Justice.

Issued this 31st day of March, 1947.

Stuart K. Barnes,
Executive Director, Office of
Defense Supplies."

V.

Opinion of the United States District Court for New Jersey in *Riverview Packing Co., et al.* v. *Reconstruction Finance Corporation,* Civ. Action No. 9775, July 28, 1950, reads, in pertinent part, as follows:

"MEANEY, District Judge.

This is an action for a judgment declaring that respondent is unjustly, arbitrarily and illegally withholding certain subsidy payments allegedly due petitioners as slaughterers of bovine animals under the regulations of respondent and its predecessor, the Defense Supplies Corporation. Jurisdiction is allegedly conferred upon this court by the Stabili-

zation Extension Act of 1944, section 102, subsection (m) 50 U.S.C.A. App. 902 (m).

Respondent answers denying that it arbitrarily withheld payment on subsidy claims of petitioners, alleging that petitioners had failed to comply with existing regulations and counterclaims as against Riverview Packing Co., Inc. for reimbursement of moneys paid on claims allegedly later invalidated. Respondent also denies the jurisdiction of the court to grant the relief sought.

The matter was referred to a master who furnished the court with two reports one as to Penn Abattoir Co., and K. & J. Markets, Inc., the other as to Riverview Packing Co., Inc. On motions to confirm the master's reports respondent filed objections and decision was reserved.

The question of jurisdiction has previously been disposed of on motion to strike the petition. However, it may be desirable to set forth the views of the court at this time.

Section 2(m) of the Stabilization Extension Act of 1944, 50 U.S.C.A. App. Par. 902(m), amending the Emergency Price Control Act of 1942, provides as follows:

> 'No agency, department, officer, or employee of the Government, in the payment of sums authorized by this or other Acts of Congress *relating to the production or sale of agricultural commodities,* * * * shall impose any conditions or penalties not authorized by the provisions of the Act or Acts, or lawful regulations issued thereunder, under which such sums are authorized * * *. Any person aggrieved by any action of any agency, department, officer, or employee of the Government contrary to the provisions hereof, or by the failure to act of any such agency, department, officer, or employee, may petition the district court of the district in which he resides or has his place of business

> for an order or a declaratory judgment to determine whether any such action or failure to act is in conformity with the provisions hereof and otherwise lawful; and the court shall have jurisdiction to grant appropriate relief. * * *' (Emphasis supplied)

On the face of this section when read alone, it would seem clear that this court has jurisdiction in the instant matter. However, section 204(d) of the Emergency Price Control Act, 50 U.S.C.A. App. Par. 924(d), had previously conferred exclusive jurisdiction 'to determine the validity of any regulation or order issued under Section 2', on the Emergency Court of Appeals and the Supreme Court upon review.

The withholding of a subsidy payment has been held to be an 'order' within the meaning of Section 204 of the Emergency Price Control Act even though not expressly so designated by the RFC. *Armour & Co.* v. *R.F.C.*, (Em. App. 1947) 162 F. 2d 918. This being so, exclusive jurisdiction would appear to be vested in the Emergency Court of Appeals under Section 204(d). These two statutory provisions must, however, be construed together, and since Section 2(m) was enacted after Section 204(d) it must have been intended to modify Section 204(d). Thus the district courts were granted jurisdiction in a limited group of cases previously exclusively within the cognizance of the Emergency Court of Appeals. This has been acknowledged by the Emergency Court of Appeals in the case of *Illinois Packing Co.* v. *Bowles*, (Em. App. 1945) 147 F. 2d 554, 560, where the court said:

> 'Subsection (m) does not purport to withdraw from the Emergency Court of Appeals any jurisdiction theretofore granted to it. It is conceivable, however, that the effect of the subsection, in a narrow class of cases, may be to give to the district courts a jurisdiction concurrent

with ours, and to that extent it may, inferentially, modify the provision of 204 (d) making our jurisdiction exclusive.'

The effect of Section 2(m) has been under judicial consideration several times resulting in decisions which seem to be somewhat in conflict. In *Blalack* v. *United States*, (6 Cir. 1946) 154 F. 2d 591, at page 596, the court said:

'* * * there was blanket jurisdiction in the District Court of all matters arising under the Stabilization Act, including challenges to the validity of regulations'

In *Illinois Packing Co.* v. *R.F.C.* (D.C.N.D. Ill. 1944) 57 F. Supp. 8, aff'd (7 Cir. 1946) 156 F. 2d 875, it was held that Section 2(m) does not give jurisdiction over an action seeking a declaratory judgment finding an amendment to a regulation of the Defense Supplies Corporation invalid. The Court said that Section 2(m) was intended only to cover actions where the agency made a determination which was incorrect in fact. A somewhat similar result was reached in *Samett* v. *R.F.C.* (10 Cir. 1947) 165 F. 2d 605, where it was said that section 2(m) conferred jurisdiction on the district courts only in cases of administrative action or failure to act under terms of a valid regulation. The Circuit Court of Appeals for the First Circuit has held in *Atlantic Meat Co.* v. *R.F.C.*, 166 F. 2d 51, that an action to recover meat subsidy payments may not be brought under Section 2(m) because meat is not an agricultural commodity. In contrast to this is the decision of the District Court for the Northern District of Illinois in *Swift & Co.* v. *R.F.C.*, 79 F. Supp. 546, holding that it had jurisdiction under Section 2(m) in an action to recover meat subsidy payments because the subsidy was one 'relating to the production or sale of agricultural commodities.'

However, whether or not meat is an agricultural commodity, does not seem to this court to be the

vital issue here as was decided in *Atlantic Meat Co.* v. *R.F.C., supra,* but it seems the inquiry should be directed to whether R.F.C. was an agency engaged in making payments relating to the production or sale of agricultural commodities'. The language used is broad; the statute does not require that the subsidy payment in question be for the production or sale of agricultural commodities, but only *related* to either the production or sale. Significant also on the question of jurisdiction is the fact that petitioners here are not attacking the validity of any regulations but assert that under the regulations they are entitled to payment.

Bearing in mind the decisions referred to above, this court concludes that it has jurisdiction in the instant case under Section 2(m). In reaching this conclusion the court agrees with the determination in *Swift & Co.* v. *R.F.C., supra,* that the subsidy program was intended to benefit the producer and to stabilize the price of cattle, hence the R.F.C. was 'an agency, department, officer or employee of the Government, in the payment of sums authorized by this or other Acts of Congress *relating to the production or sale of agricultural commodities'* within the meaning of Section 2(m). Thus the court under Section 2(m) has jurisdiction to determine whether 'any such action or failure to act is in conformity with the provisions hereof and otherwise lawful.'

In attacking the jurisdiction of the court the R.F.C. also alleges that petitioners have failed to exhaust their administrative remedies in that the protest procedure provided in Section 203(a), 50 U.S.C.A. App. Par. 923 (a), has not been used. Respondent argues that the protest procedure is a prerequisite to jurisdiction of the Emergency Court of Appeals, *Illinois Packing Co.* v. *Bowles.* (Em. App. 1947) *supra,* and if the district court has concurrent jurisdiction it should be subject to the same requirement. The argument has much force. The

statutory grant of jurisdiction to the Emergency Court of Appeals was limited to cases where the protest procedure had been followed, 50 U.S.C.A. App. Par. 924 (a). However, in Section 2(m) no such limitation is imposed on the jurisdiction of the district court. The court concludes, therefore, that the petitioners need not have filed a protest before seeking relief in this court."

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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 316

SWIFT AND COMPANY, PETITIONER

v.

RECONSTRUCTION FINANCE CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinions of the United States District Court for the Northern District of Illinois, Eastern Division (R. 60–73; 719–728), are reported at 79 F. Supp. 546 and 81 F. Supp. 629. The opinion of the Court of Appeals for the Seventh Circuit (R. 752–759) is reported at 183 F. 2d 456.

JURISDICTION

The judgment of the court of appeals was entered on June 21, 1950 (R. 760). The petition

for a writ of certiorari was filed on September 19, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether an "announcement" by the Reconstruction Finance Corporation, terminating the payment of subsidies under the Emergency Price Control Act, is a "regulation" or "order" reviewable only by the Emergency Court of Appeals.

2. Whether a subsidy payable to meat packers, measured by the slaughter of livestock, is a sum "relating to the production or sale of agricultural commodities", giving the district court jurisdiction over the termination of such subsidy by reason of Section 2 (m) of the Emergency Price Control Act.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942, as amended, and of the controlling regulations and directives are set forth in the Appendix, *infra,* pp. 21–26.

STATEMENT

This suit was instituted by a complaint filed by petitioner on June 30, 1947, in the United States District Court for the Northern District

of Illinois, claiming meat subsidy payments which respondent was allegedly withholding (R. 2–5).

The origin of this suit, while not fully revealed in the transcript, is readily apparent from the official records of the emergency subsidy program.[1] The basic authority for institution of subsidy payment programs is found in Section 2 (e) of the Emergency Price Control Act of 1942 (50 U. S. C. App. 902 (e)), *infra,* pp. 21–22. Such subsidy payments were found necessary with respect to meat products in June 1943. At that time, in order to implement the President's hold-the-line policy (E. O. 9328, 8 F. R. 4681), the Office of Price Administration reduced the maximum permissible selling prices on meat products approximately 10 per cent.[2] This reduction was compensated for by a subsidy, payable to meat packers on the basis of livestock slaughtered, which was put into effect as of June 7, 1943,

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[1] For a complete account of the origin, purposes and mechanics of the meat subsidy program, see *Armour & Co.* v. *Bowles*, 148 F. 2d 529, 532–534 (E. C. A.), certiorari denied, 325 U. S. 871; *Earl C. Gibbs, Inc.* v. *Defense Supplies Corp.*, 155 F. 2d 525, 526–529 (E. C. A.), certiorari denied, 329 U. S. 737; Hyman and Nathanson, *Judicial Review of Price Control: The Battle of the Meat Regulations*, 42 Ill. Law Review 584.

[2] Amendment No. 15, Revised Maximum Price Regulation 169, 8 F. R. 7675; Amendment No. 5, Revised Maximum Price Regulation 148, 8 F. R. 7671; Amendment No. 4, Revised Maximum Price Regulation 239, 8 F. R. 7679.

by Regulation No. 3 of the Defense Supplies Corporation (8 F. R. 10826–10829; R. 8).[3]

Upon the dissolution of the Defense Supplies Corporation on July 1, 1945,[4] Regulation No. 3, as subsequently amended and revised, was taken over by respondent (Amendment No. 6, Revised Regulation No. 3, 10 F. R. 11155). This regulation continued in effect until June 30, 1946,[5] when, as a result of the termination of the Emergency Price Control Act of 1942, price control lapsed and the authority to continue subsidy programs, including that set up by Regulation No. 3, expired (12 F. R. 66).

On July 25, 1946, the Price Control Extension Act of 1946 became law (60 Stat. 664). Pursuant to its authority under that Act, the Price Decontrol Board, on August 22, 1946, authorized

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[3] The Defense Supplies Corporation, a corporation organized under Section 5d of the Reconstruction Finance Corporation Act (15 U. S. C. 606b) and therefore qualified to pay subsidies under Section 2 (e) of the Emergency Price Control Act of 1942 (50 U. S. C. App. 902 (e)) on meat products defined by the President to be strategic and critical materials, was directed on May 7, 1943, to put a subsidy program in operation so as to "reimburse [meat packers and wholesalers] for the reduction in ceiling prices." (For text of this May 7, 1943, directive, see R. 689.)

[4] The Act of June 30, 1945 (59 Stat. 310), which took effect July 1, 1945, transferred to respondent the authority, functions, and property of the Defense Supplies Corporation.

[5] Section 1 of the Act of June 30, 1945 (59 Stat. 306), continued the Emergency Price Control Act of 1942 into effect until June 30, 1946.

the reimposition of maximum selling prices on meat products and the reestablishment of the subsidy program (11 F. R. 9138). Accordingly, the Price Administrator issued regulations making the various meat price controls effective September 1, 1946 (11 F. R. 9373) and the Director of Economic Stabilization directed respondent to reestablish the subsidy program (11 F. R. 9375). Respondent then issued its Regulation No. 10, providing that subsidy payments would be made, effective September 1, 1946, in accordance with all the terms and conditions of former Regulation No. 3 (R. 3, 6; *infra,* p. 24).

The restored meat price controls were in effect only through October 14, 1946 (Amendment No. 64, Supplementary Order No. 132, 11 F. R. 12093), when Regulation No. 10 also expired (12 F. R. 66). Immediately following decontrol, meat prices skyrocketed to levels far above the former maximum, permissible selling prices (R. 690–691). Thus, by October 19, 1946, four days after decontrol, the former, controlled price of 25¢ for beef jumped to 55¢ (R. 690). In the same period, veal, which had sold for approximately 21¢ under control, rose to 46¢, and the cost of bacon shot up from 29¢ to 52¢ (R. 690, 691). These increases represented a price increase of about 100%, whereas, as has been noted, the subsidy program had been instituted to compensate meat producers for a 10% price reduction, *supra,* p. 3; R. 687, 689.

On March 31, 1947, respondent issued its Announcement No. 1 declaring in effect that no subsidies were to be paid with respect to meat held in inventory at the close of business on October 14, 1946, since such meat was sold at the greatly increased and uncontrolled prices[6] (R. 4, 32; *infra,* pp. 24–26). To implement this Announcement, petitioner, on April 29, 1947, was requested to report its meat inventory on hand at the end of October 14 (R. 34, 45).

Despite the provisions of the Announcement, petitioner, ignoring the request for its terminal inventory report, "repeatedly demanded the payment" by respondent of subsidies for its October 14, 1946, inventory (R. 3). Upon respondent's refusal to comply with these demands, petitioner filed its complaint in the district court, alleging it had filed its claims "pursuant to and in conformity with Regulation No. 10," (R. 3), but that payment had been refused by respondent because of the provisions of Announcement No. 1 issued under Regulation No. 10 (R. 5, 32). Petitioner prayed for a declaratory judgment invalidating Announcement No. 1 and respondent's denial of its subsidy claims thereunder, asserting that the Announcement and the denial conflicted with the "terms or provisions of the

[6] The Announcement also directed the "recapture" of those subsidies allocable to such inventories and which had already been paid to large slaughterers (R. 32–33).

Emergency Price Control Act of 1942" and were "otherwise unlawful, capricious, arbitrary, null, void and of no effect" (R. 5). Petitioner further requested that an injunction issue to restrain respondent from enforcing Announcement No. 1, and that it be awarded damages against the respondent for the sum of $221,861.51, the subsidies allegedly owing to it (R. 5). Jurisdiction of the district court was invoked under Section 2 (m) of the Emergency Price Control Act of 1942, *infra*, pp. 22–23 (R. 2).

Respondent's answer, admitting its refusal to pay, again denied the validity of the claim (R. 44–45). In a separate defense, the answer alleged that the district court lacked jurisdiction because Section 204 (d) of the Emergency Price Control Act of 1942, *infra*, p. 23, vested exclusive jurisdiction of such suits in the Emergency Court of Appeals, and because Section 2 (m) of that Act did not apply so as to confer jurisdiction on the district court.[7]

The district court, holding that it had jurisdiction and that Announcement No. 1 with its implementing letter were invalid, ruled that petitioner "is entitled to a declaratory judgment finding that R. F. C. is indebted to it in the sum of $221,861.51, the amount claimed in the com-

[7] The answer also set forth two counterclaims which are not in issue here (R. 46, 59, 73, 230).

plaint" (R. 73).[8] Soon thereafter, the Emergency Court of Appeals, in a case involving another meat producer, ruled that Announcement No. 1 was valid. *Wm. Schluderberg-T. J. Kurdle Co.* v. *Reconstruction Finance Corporation,* 169 F. 2d 419. After this Court denied certiorari in that case (335 U. S. 846), the district court filed another opinion, in which it adhered to its original views and refused to follow the *Schluderberg* decision (R. 719–728). The court then entered judgment holding Announcement No. 1 invalid and awarding petitioner $221,861.51 in damages with interest at 5% from the date of issuance of the Announcement (R. 736).

On appeal, the court below "reversed with directions to dismiss the cause for want of jurisdiction" (R. 759), holding that Section 2 (m) vested no jurisdiction over the action in the district court, and that Section 204 (d) vested exclusive jurisdiction thereover in the Emergency

[8] It should be noted that this ruling preceded any hearing on the complaint, and was handed down *before* any proof or evidence of any sort had been introduced by petitioner. Petitioner, realizing the need of introducing some "factual material supporting Judge Sullivan's opinion" (R. 106) and that it "must go to the Circuit Court of Appeals with some evidence" (R. 106), succeeded in getting the case referred to a Master for the purpose of enabling it to introduce evidence (R. 92). While this highly questionable procedure was assigned as error by respondent in appealing from the district court's decision, it was, of course, unnecessary for the court below to consider this aspect of the case, in view of its holding as to the district court's lack of jurisdiction.

Court of Appeals (R. 752–759). Chief Judge Major dissented (R. 759).

ARGUMENT

The decision of the court below, holding that the district court had no jurisdiction, is, we submit, clearly correct and does not require review by this Court.

1. Section 204 (d) of the Emergency Price Control Act of 1942 (50 U. S. C. App. 924 (d), see *infra*, p. 23) vests in the Emergency Court of Appeals, and in this Court, upon review of the Emergency Court's judgments, "exclusive jurisdiction to determine the validity of any regulation or order issued under section 2 * * * and of any provision of any such regulation, order * * *," and provides that no other court shall have jurisdiction or power "to consider the validity of any such regulation, order * * *." The compelling considerations which motivated that exclusive grant of jurisdiction have been reviewed by this Court, and the constitutionality of the grant affirmed. *Lockerty* v. *Phillips*, 319 U. S. 182; *Yakus* v. *United States*, 321 U. S. 414; *Bowles* v. *Willingham*, 321 U. S. 503.

Since Announcement No. 1 was issued under Regulation No. 10, which in turn was issued under Section 2 (e) of the Price Control Act,[9]

[9] Petitioner does not even contend that the Announcement and Regulation were not issued under Section 2 (e) of the Price Control Act. Nor could any such contention have

consideration by the district courts of the validity of the provisions of the Announcement would seem barred by the express terms of Section 204 (d). Petitioner endeavors to avoid the jurisdictional limitation of Section 204 (d) by characterizing respondent's action in issuing Announcement No. 1 as something other than the issuance of an order or regulation (Pet. 26). But there can be little doubt that the general nature of the Announcement, its object, and widespread impact require it to be considered a regulation of general applicability governing an entire segment of the meat industry. *Wm. Schluderberg-T. J. Kurdle Co.* v. *Reconstruction Finance Corporation,* 169 F. 2d 419, 420 (E. C. A.), certiorari denied, 335 U. S. 846. Indeed, even though petitioner denies that the Announcement was a regulation, it admits the general applicability of the Announcement by emphasizing that the district court's invalidation of Announcement No. 1 "relates not only to this petitioner, but to each of these 4,000 commercial slaughterers which had meat inventory on hand at the termination of

merit. *Wm. Schluderberg-T. J. Kurdle Co.* v. *Reconstruction Finance Corporation*, 169 F. 2d 419 (E. C. A.); *Earl C. Gibbs, Inc.* v. *Defense Supplies Corp.*, 155 F. 2d 525, 526–528 (E. C. A.), certiorari denied, 329 U. S. 737; *Illinois Packing Co.* v. *Snyder*, 151 F. 2d 337, 338, 339 (E. C. A.); *Illinois Packing Co.* v. *Bowles*, 147 F. 2d 554, 556–558 (E. C. A.); *Illinois Packing Co.* v. *Defense Supplies Corp.*, 57 F. Supp. 8, 10–11 (N. D. Ill.), affirmed *sub nom. Illinois Packing Co.* v. *Reconstruction Finance Corp.*, 156 F. 2d 875 (C. A. 7).

the livestock slaughter subsidy program effective October 15, 1946" (Pet. 18). The conceded general applicability of the Announcement is a recognition, we submit, of its regulatory nature.

In any event, it is thoroughly settled that Section 204 (d) conferred on the Emergency Court of Appeals exclusive original jurisdiction not only with respect to the validity of regulations of general applicability but also with respect to the validity of orders directed at particular individuals. *Porter* v. *Eastern Sugar Associates,* 159 F. 2d 299, 301–302 (C. A. 4), and cases there cited; *Woods* v. *Bobbitt,* 165 F. 2d 673 (C. A. 4); *Coffey* v. *Smith,* 159 F. 2d 277 (C. A. 7); *Fleming* v. *Phoenix Chair Co.,* 168 F. 2d 3 (C. A. 7); *Noble* v. *Ricker,* 165 F. 2d 983 (C. A. 10). Thus, even if Announcement No. 1 should not be deemed a regulation, Section 204 (d)'s grant of exclusive jurisdiction nevertheless prevents the district court from taking cognizance of this action because there is no question that the denial by respondent of the petitioner's subsidy claims constitutes the issuance of an individual order under Section 2 (e). It has consistently been held that Reconstruction Finance Corporation's administrative action "relative to the payment or nonpayment of a subsidy" is "an order issued under Section 2" over which the Emergency Court of Appeals has exclusive jurisdiction. *Tambasco* v. *Reconstruction Finance Corporation,* 178 F.

2d 283, 285 (C. A. 2); *Duncan Coffee Co.* v. *Reconstruction Finance Corporation,* 178, F. 2d 926, 928 (E. C. A.); *Merchants Packing Company* v. *Reconstruction Finance Corporation,* 176 F. 2d 908 (E. C. A.); *Wm. Schluderberg-T. J. Kurdle Co.* v. *Reconstruction Finance Corporation,* 169 F. 2d 419, 420 (E. C. A.), certiorari denied, 335 U. S. 846; *Belle City Packing Company* v. *Reconstruction Finance Corporation,* 169 F. 2d 413, 414 (E. C. A.); *Armour & Co.* v. *Reconstruction Finance Corporation,* 162 F. 2d 918, 923 (E. C. A.); *Greenhouse Bros. & Finkelstein, Inc.* v. *Reconstruction Finance Corporation,* 159 F. 2d 712 (E. C. A.), certiorari denied, 331 U. S. 812; *Illinois Packing Co.* v. *Snyder,* 151 F. 2d 337 (E. C. A.); *Illinois Packing Co.* v. *Bowles,* 147 F. 2d 554 (E. C. A.). Therefore, since respondent's action in refusing to pay subsidies to petitioner here was at least an order, within the meaning of that word as used in Section 204 (d), "it follows inevitably", as pointed out by the court below, that petitioner's suit to set aside this administrative action as unlawful is cognizable only in the Emergency Court of Appeals (R. 758).

2. Petitioner must, therefore, depend solely on Section 2 (m) of the Emergency Price Control Act of 1942, *infra,* pp. 22–23, to sustain the jurisdiction of the district court. Such reliance is, however, misplaced. That subsection of the Price Control Act, added by the Act of June 30, 1944

(58 Stat. 632), prohibits any agency, department, officer, or employee of the Government from imposing unlawful conditions or penalties in the payment of subsidies relating to the production or sale of agricultural commodities and provides that persons aggrieved by such action may petition the district courts for relief. An examination of the letter of the statute and a consideration of its history in Congress disclose that it was not designed to and does not subject subsidy regulations or orders, such as those here involved, to the review of the federal district courts.

a. According to its express terms, Section 2 (m), *infra*, pp. 22–23, comes into play only in cases involving the payment of sums relating to "the production or sale of agricultural commodities." Involved here, however, are subsidy claims on the production and sale of beef, veal, pork and other processed meats (R. 687–689). These meat products are derived from, but they are not themselves agricultural commodities. *Atlantic Meat Co.* v. *Reconstruction Finance Corp.*, 166 F. 2d 51 (C. A. 1); *Superior Packing Co.* v. *Clark*, 164 F. 2d 343, 348–349 (E. C. A.); *Bowles* v. *Superior Packing Co.*, 63 F. Supp. 12, 16–17 (D. Minn.), affirmed, 156 F. 2d 193 (C. A. 8), certiorari denied, 329 U. S. 788; *United States* v. *Charney*, 50 F. Supp. 581 (D. Mass.); see, also, *Dowling Bros. Distilling Co.* v. *United States*, 153 F. 2d 353, 358 (C. A. 6), certiorari denied

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sub nom. Gould v. *United States,* 328 U. S. 848; *Taub* v. *Bowles,* 149 F. 2d 817, 823 (E. C. A.), certiorari denied, 326 U. S. 732; *Bowles* v. *American Brewery,* 146 F. 2d 842, 845 (C. A. 4). The distinction between "agricultural commodities," that is, commodities produced on a farm and sold by a farmer in their raw, natural or unprocessed state (the live steer or hog), and commodities produced from them (beef cuts, pork products, etc.) was drawn when the Price Control Act was first enacted. See, *e. g.,* Sections 2 (e), 2 (i), 3 (c) (50 U. S. C. App. 902 (e), 902 (i), 903 (c)); see, also Section 3 of the Stabilization Act of 1942, 50 U. S. C. App. 963. That distinction was carried over into Section 2 (m) when it was added to the Act. As the Court of Appeals for the First Circuit notes in *Atlantic Meat Co.* v. *Reconstruction Finance Corporation,* 166 F. 2d 51, 55, the legislative history makes it plain that, in enacting Section 2 (m), Congress had in mind the farmer rather than the processor of farm products. See Sen. Rep. No. 922, 78th Cong., 2d sess., p. 9; Hearings before Senate Committee on Banking and Currency on S. 1764, 78th Cong., 2d sess., pp. 464–475; 90 Cong. Rec. 5291–5292.

Nor can petitioner escape the requirements of Section 2 (m) by labelling the subsidy payments here involved as payments on livestock (admittedly an agricultural commodity) rather than on meat products (Pet. 22–25). The cases hold

repeatedly that, even though the formula for computing these subsidy payments was couched in terms of livestock slaughter, for industry convenience, the subsidies are actually meat product subsidies and not subsidies on cattle or livestock. *Tambasco* v. *Reconstruction Finance Corporation,* 178 F. 2d 283, 285 (C. A. 2); *Superior Packing Co.* v. *Clark,* 164 F. 2d 343 (E. C. A.); *Wm. Schluderberg-T. J. Kurdle Co.* v. *Reconstruction Finance Corporation,* 169 F. 2d 419 (E. C. A.), certiorari denied, 335 U. S. 846. In fact, the express language of the directives authorizing inauguration of this subsidy program so as to compensate meat producers for the 10% reduction in the maximum prices of meat products ordered in June 1943, shows conclusively that the subsidy was on meat products rather than on cattle (R. 687–689). And the need for such subsidies to relieve the "squeeze" between high livestock prices and low meat ceilings, in which the meat producers (rather than livestock producers) were thus caught, has been consistently recognized by the courts. *San Antonio Packing Co.* v. *Reconstruction Finance Corporation,* 182 F. 2d 614 (E. C. A.); *Wm Schluderberg-T. J. Kurdle Co.* v. *Reconstruction Finance Corporation,* 169 F. 2d 419 (E. C. A.), certiorari denied, 335 U. S. 846; *Armour & Co.* v. *Reconstruction Finance Corporation,* 162 F. 2d 918, 922 (E. C. A.); *Ben H. Rosenthal & Co., Inc.* v. *Porter,* 158 F. 2d 171, 172

(E. C. A.), certiorari dismissed on petitioner's motion, 330 U. S. 802; *Armour & Co.* v. *Bowles,* 148 F. 2d 529, 532, 534 (E. C. A.), certiorari denied, 325 U. S. 871; *Earl C. Gibbs, Inc.* v. *Defense Supplies Corp.,* 155 F. 2d 525, 526 (E. C. A.), certiorari denied, 329 U. S. 737; *Illinois Packing Co.* v. *Snyder,* 151 F. 2d 337, 339 (E. C. A.).

b. Petitioner's reliance on Section 2 (m) is misplaced for an additional reason. Even if the subsidy payments here involved were actually subsidies on livestock, the district court still would not have jurisdiction. For, even with respect to agricultural commodities, Section 2 (m) did not repeal Section 204 (d) so as to deprive the Emergency Court of Appeals of exclusive jurisdiction to consider the validity of subsidy orders or regulations issued pursuant to the Price Control Act. That is the holding, not only of the court below, but also of every other court which has ruled on the question. *Tambasco* v. *Reconstruction Finance Corporation,* 178 F. 2d 283 (C. A. 2); *Wm. Schluderberg-T. J. Kurdle Co.* v. *Reconstruction Finance Corporation,* 169 F. 2d 419 (E. C. A.), certiorari denied, 335 U. S. 846; *Samett* v. *Reconstruction Finance Corporation,* 165 F. 2d 605 (C. A. 10), certiorari denied, 334 U. S. 812; *Atlantic Meat Co.* v. *Reconstruction Finance Corp.,* 166 F. 2d 51, 56–57 (C. A. 1); *Illinois Packing Co.* v. *Defense Supplies Corp.,* 57 F. Supp. 8 (N. D. Ill.), affirmed *sub*

nom. Illinois Packing Co. v. *Reconstruction Finance Corp.*, 156 F. 2d 875 (C. A. 7).[10] And it is confirmed by the history of the legislation. The Senate committee which recommended the amendment incorporating Section 2 (m) into this Act, specifically stated that the exclusive jurisdiction of the Emergency Court of Appeals in cases concerning the validity of regulations was left unchanged (see Sen. Rep. No. 922, 78th Cong., 2d sess., p. 58). In addition, statements made both during the hearings before the committee and when the bill was discussed on the floor of the Senate demonstrate that the

[10] Petitioner has listed nine cases, pending in the district courts, as involving similar or related questions under Section 2 (m) (Pet. 19, notes 8 and 9). Of these, all but the *Riverview Packing* case (Pet. 20) remain undecided. The district court in that case, on July 28, 1950, agreed with the determination of District Judge Sullivan in the instant case and accepted jurisdiction under 2 (m). However, even though the *Riverview* opinion was, as petitioner points out, "handed down after the decision," (Pet. 20) of the court of appeals in the instant case, it is apparent that the district court in the *Riverview* case relied on Judge Sullivan's decision without regard to the fact that that decision had been reversed by the court below on June 21, 1950. Moreover, there is nothing to indicate, should the instant petition be denied, that the Court of Appeals for the Third Circuit, in hearing respondent's appeal of the *Riverview* case, would decline to follow the well-reasoned opinion below, as well as those of the Emergency Court of Appeals and the Courts of Appeals for the First, Second, Seventh and Tenth Circuits—all of which, as shown *supra*, pp 16–17, have held that Section 2 (m) did not vest jurisdiction of such suits in the district courts. Similarly, those consistent holdings should also, we submit, be dispositive of the eight undecided cases.

new subsection was not designed to make such a far-reaching change. See Hearings before Committee on Banking and Currency on S. 1764, 78th Cong., 2d sess., pp. 464–471; 90 Cong. Rec. 5291–5292. Moreover, when, in 1945, a year after enactment of Section 2 (m), Congress legislated to relieve meat producers from inequitable liabilities to repay extra subsidy payments for which they had not been eligible, it clearly stated that the Emergency Court of Appeals still remained the proper forum for the review of meat subsidy claims.[11] To hold that Section 2 (m) had abol-

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[11] The statutory provision referred to is Section 2 of the Act of June 23, 1945, c. 193, 59 Stat. 260, 261, which reads as follows:

"Any slaughterer who heretofore or hereafter shall have received extra compensation payments under Livestock Slaughter Payments Regulation Numbered 3 of Defense Supplies Corporation (adopted pursuant to directives of the Director of Economic Stabilization) when such slaughterer was not in a class eligible for such extra compensation payments, shall be relieved, in whole or in part, of obligation to repay the amount thereof and shall be entitled to receive, in whole or in part, the amount of such extra compensation payments repaid by such slaughterer to, or withheld by Defense Supplies Corporation on account of such extra compensation payments, to the extent that it is determined by the Director of Economic Stabilization, or any agency of the Government authorized by him, that it would be inequitable for Defense Supplies Corporation to require repayment by such slaughterer or to retain the amounts so repaid or withheld, provided such Director or agency also determines that such slaughterer believed reasonably and in good faith that he was eligible to receive such extra compensation payments: *Pro-*

ished the exclusiveness of the Emergency Court's jurisdiction would therefore not only imply in that section a repeal, in part, of Section 204 (d),[12] but would fly in the face of the specific congressional directive to the contrary in 1945.

3. Petitioner also raises the question as to whether respondent's refusal under the Announcement to pay meat subsidies on inventory on hand when meat prices were decontrolled on October 15, 1946, was authorized by the Price Control Act. Since the court below ordered the dismissal of the action because of lack of jurisdiction, it obviously did not reach the question of validity of the Announcement. It seems sufficient therefore to point out that the Emergency Court of Appeals, the only court having original jurisdiction to determine the validity of the Announcement, has already held the Announcement valid and ruled that subsidies may not be paid on meat sold at decontrolled prices. *Wm. Schluderberg-T. J. Kurdle Co.* v. *Reconstruction Finance Corpora-*

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vided, That any determination by such Director or agency under this section shall be reviewable by the Emergency Court of Appeals under such rules as such court may prescribe."

[12] Such repeal has, of course, been traditionally frowned upon by this Court. *Georgia* v. *Pennsylvania R. Co.*, 324 U. S. 439, 456–457; *United States* v. *Madigan*, 300 U. S. 500, 506.

tion, 169 F. 2d 419 (E. C. A.), certiorari denied, 335 U. S. 846.[13]

CONCLUSION

The decision below is correct and there exists no conflict. It is respectfully submitted therefore that the petition for a writ of certiorari should be denied.

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OCTOBER 1950.

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[13] Our brief in opposition to the petition for certiorari in that case (No. 248, Oct. T., 1948) shows the soundness of the court's decision and also shows that Announcement No. 1 not only conformed to price control statutes but was actually required by the Price Control Extension Act of 1946 (60 Stat. 664). Section 6 (a) (4) of that Act (60 Stat. 671) expressly prohibited subsidy operations for any commodity for any period after July 25, 1946 "during which maximum prices on such commodity are not in effect," and thus constituted a congressional reassertion of the fundamental basis of the meat subsidy and the other subsidy programs, *i. e.*, subsidy payments would not be made where prices had been decontrolled.

APPENDIX

1. The pertinent provisions of the Emergency Price Control Act of 1942, as amended (56 Stat. 23, 765; 58 Stat. 632; 59 Stat. 306; 60 Stat. 664; 50 U. S. C. App. 901 *et seq.*) provide as follows:

> Sec. 2 (e); 50 U. S. C. App. 902 (e):
>
> Whenever the Administrator determines that the maximum necessary production of any commodity is not being obtained or may not be obtained during the ensuing year, he may, on behalf of the United States, without regard to the provisions of law requiring competitive bidding, buy or sell at public or private sale, or store or use, such commodity in such quantities and in such manner and upon such terms and conditions as he determines to be necessary to obtain the maximum necessary production thereof or otherwise to supply the demand therefor, or make subsidy payments to domestic producers of such commodity in such amounts and in such manner and upon such terms and conditions as he determines to be necessary to obtain the maximum necessary production thereof: *Provided,* That in the case of any commodity which has heretofore or may hereafter be defined as a strategic or critical material by the President pursuant to section 5d of the Reconstruction Finance Corporation Act, as amended, such determinations shall be made by the Federal Loan Administrator with the approval of the President, and, notwithstanding any other provision

of this Act or of any existing law, such commodity may be bought or sold, or stored or used, and such subsidy payments to domestic producers thereof may be paid, only by corporations created or organized pursuant to such section 5d * * *.

Sec. 2 (m); 50 U. S. C. App. 902 (m):

No agency, department, officer, or employee of the Government, in the payment of sums authorized by this or other Acts of Congress relating to the production or sale of agricultural commodities, or in contracts for the purchase of any such commodities by the Government or any department or agency thereof, or in any allocation of materials or facilities, or in fixing quotas for the production or sale of any such commodities, shall impose any conditions or penalties not authorized by the provisions of the Act or Acts, or lawful regulations issued thereunder, under which such sums are authorized, such contracts are made, materials and facilities allocated, or quotas for the production or sale of any such commodities are imposed. Any person aggrieved by any action of any agency, department, officer, or employee of the Government contrary to the provisions hereof, or by the failure to act of any such agency, department, officer, or employee, may petition the district court of the district in which he resides or has his place of business for an order or a declaratory judgment to determine whether any such action or failure to act is in conformity with the provisions hereof and otherwise lawful; and the court shall have jurisdiction to grant appropriate relief. The provisions of the Judicial Code as to monetary amount involved necessary to give juris-

diction to a district court shall not be applicable in any such case.

Sec. 204 (d); 50 U. S. C. App. 924 (d):

Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals as provided in section 240 of the Judicial Code, as amended (U. S. C., 1934 edition, Title 28, sec. 347). The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule or to restrain or enjoin the enforcement of any such provision.

2. Regulation No. 10, Reconstruction Finance Corporation, provides:

> SECTION 7010.1. Reconstruction Finance Corporation shall make payments to eligible slaughterers on cattle, calves, hogs, and pigs slaughtered on and after September 1, 1946, in accordance with all the terms and conditions of Livestock Slaughter Payments, Revised Regulation No. 3 of Reconstruction Finance Corporation, as amended by Amendments No. 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18.
>
> SECTION 7010.2 Revised Regulation No. 3 of Reconstruction Finance Corporation and Amendments No. 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 thereto are made a part of this regulation.
>
> SECTION 7010.3. This regulation shall terminate automatically, without regard to the ten day notice provision of Section 7003.12 of Revised Regulation No. 3, on the failure of any condition required by law as a prerequisite to validity of a subsidy on livestock or meat.
>
> This regulation shall become effective September 1, 1946. Issued this 28th day of August, 1946.
>
> STUART K. BARNES,
> *Executive Director,*
> *Office of Defense Supplies.*

3. Announcement No. 1 Under Regulation No. 10 of Reconstruction Finance Corporation provides:

> The volume of meat held in inventories by slaughterers at the close of business on October 14, 1946 (the date of termination of price controls on meat) was substantial, and such inventories were, of course, sold

thereafter at uncontrolled prices. The Office of Temporary Controls has determined that in view of the provisions of Section 6 (a) (4) of the Price Control Extension Act of 1946 and in order to avoid unjust enrichment of packers at the expense of the Government, subsidies allocable to these inventories should be recaptured. Operation of the plan is as follows:

I. De Minimis Cases. Because of the disportionate administrative burden in relation to the potential amounts involved, the Government will not attempt to recapture such subsidies in the case of slaughterers who furnish information to the RFC showing that they did not slaughter in excess of 500,000 pounds total live weight of cattle, calves and hogs combined during the period consisting of the May, June and September 1946 accounting periods. A form for the use of slaughterers falling in this class is attached hereto (RFC Form No. DSC 117). Such slaughterers must complete and file this form with RFC before April 30, 1947, unless they elect to have invalidated their September and October 1946 meat subsidy claims whether paid or unpaid. On receipt of the completed form showing slaughter of not more than a total of 500,000 pounds live weight of cattle, calves and hogs combined during the period consisting of the May, June and September 1946 accounting periods, RFC will pay any amounts otherwise due on the September and October 1946 claims.

II. Large Slaughterers. With respect to slaughterers who slaughtered in excess of 500,000 pounds during the May-June-September period the amount to be recaptured will be based on the amount of meat held in

inventory at the close of business October 14, 1946, unless they elect to settle instead by foregoing their total subsidies for September and October 1946. A form to be used by such slaughterers in reporting their inventories or for the purpose of making this election will be furnished as soon as copies are available. Until the form is available, no further September and October subsidy payments can be made to any slaughterer in this category unless he had no inventory of meat or meat products at the close of business October 14, 1946.

With respect to all slaughterers, large or small, who have already received the September-October subsidy, if their cases are not settled pursuant to the procedures provided herein, they will be referred to the Department of Justice.

Issued this 31st day of March, 1947.

STUART K. BARNES,
Executive Director,
Office of Defense Supplies.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1950.

No. 316

SWIFT & COMPANY,

Petitioner,

vs.

RECONSTRUCTION FINANCE CORPORATION,

Respondent.

PETITIONER'S REPLY BRIEF IN SUPPORT OF ITS PETITION FOR WRIT OF CERTIORARI.

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Respondent's argument is predicated in large part upon its erroneous, misleading and incomplete statement of the case. The defects in respondent's statement, which are pointed out under Point II of this response, serve as effective reply to much of respondent's argument and renders elaboration in that regard unnecessary.

At page 6 of its brief in opposition respondent states that Announcement No. 1 was "in effect" a declaration "that no subsidies were to be paid with respect to meat held in inventory at the close of business on October 14, 1946." More accurately paraphrased, respondent, by its Announcement No. 1, declared that:

> Although we have honored practically all of your subsidy claims on livestock slaughter operations had

> up to and including October 14, 1946, irrespective of resulting meat inventory on hand as of that time, just as we paid like subsidies under similar circumstances when decontrol occurred in June 30, 1946; and although you have already passed back the benefits to be derived from the subsidy to the livestock producer by purchasing livestock at the applicable live stock price ceilings and within the applicable minimum-maximum livestock price ranges, we have now decided, five and one-half months after the termination of Livestock Slaughter Regulation No. 10, to impose a condition on the payment of livestock slaughter subsidies that unless you had no meat inventory on hand on October 14, 1946, we will disallow your livestock slaughter subsidy claims and make you pay back those subsidy payments received by you for slaughter operations as to which inventory remained on hand on October 14, 1946.

The "Announcement" imposes a condition upon payment of subsidies relating to the production or sale of an agricultural commodity, to-wit: livestock, not authorized by the lawful regulations, directives, and statutes. Therefore, petitioner claims that "Announcement No. 1" runs afoul of both the letter and intent of Section 2(m) of the Price Control Act, and that petitioner, as person aggrieved by the imposition of this unlawful condition or penalty, has a statutory right under Section 2(m) to contest its legality in the District Court. Respondent's suggestions to the contrary notwithstanding, petitioner does not challenge but affirmatively relies on the operating statutes, directives and regulations.

I.

RESPONDENT'S BRIEF IN OPPOSITION CONFIRMS THE POINT IN THE PETITION THAT THIS CASE INVOLVES IMPORTANT FEDERAL QUESTIONS WHICH WERE ERRONEOUSLY DECIDED BY THE COURT OF APPEALS. THE COURT OF APPEALS HAS READ SECTION 2(m) OUT OF THE PRICE CONTROL ACT.

Respondent advances two arguments in support of the decision of the Court of Appeals. Neither argument meets the issue raised in the petition that the effect of the decision of the Court of Appeals is to read Section 2(m) out of the statute.

1. First, respondent argues that the announcement either had general applicability and therefore is "in effect" a regulation (Br. 9-11), or that the announcement had particular applicability and therefore is "in effect" an order (Br. 11-12). From this premise respondent contends that "it follows inevitably" that a suit to set aside this unlawful administrative action is cognizable only in the Emergency Court of Appeals by virtue of Section 204(d) of the Price Control Act, irrespective of the provisions of Section 2(m). (Br. 16-19.) The result of this argument, if sustained, will be to make the jurisdictional provisions of Section 204(d) applicable to any and all administrative action taken with relation to the subsidy program, and to leave absolutely no area for the operation of Section 2(m). In other words, respondent seeks to read Section 2(m) out of the statute and to attribute to Congress an intention that enactment of Section 2(m) was a purposeless and idle ceremony.

Respondent's argument is untenable on its face. The very least to be said is that Section 2(m) and Section 204(d) are to be read together. Otherwise Section 2(m) is given no meaning or effect. When the sections are construed together it clearly appears that Congress vested

the district courts with jurisdiction to hear and determine challenges to administrative action imposing conditions or penalties on the payment of subsidies "*relating to* the production or sale of agricultural commodities" which are challenged as being unauthorized by the lawful statutes and lawful regulations authorizing the payment of such subsidies. That is precisely the case at bar. Petitioner does not challenge the regulation. Rather it contends the administrative action was not authorized by the regulation or the directives or the price control acts.

Petitioner suggested it was at a loss to perceive what possible application could be made of Section 2(m) in the light of the interpretation of that section advanced by respondent and erroneously accepted by the Court of Appeals. Respondent has failed to point out any possible use to be made of Section 2(m) should the decision stand. Indeed, none is possible, since petitioner's interpretation of Section 204(d) has the clear and unmistakable effect of reading Section 2(m) out of the statute, and of rendering it of no force and effect.

2. Secondly, respondent argues that Section 2(m) does not apply because meat is not an agricultural commodity. The fact that meat is not an agricultural commodity is obvious and is conceded by petitioner. But the issue is not whether meat is an agricultural commodity.[1] The issue is whether the livestock slaughter subsidy here involved is one "*relating to* the production or sale of agricultural commodities," as provided by Section 2(m).[2]

---

[1] As petitioner indicated (Pet. 15-16, 22-23), the majority of the Court of Appeals fell into this same error, and decided the case on this wholly erroneous misunderstanding of the basic issue, and the position of the parties with respect to it.

[2] Section 302(1) of the Price Control Act provided that "the term 'agricultural commodity' includes livestock". 50 U.S.C.A. § 942.

In short, was the subsidy one "relating" to the "*production or sale*" of livestock, which respondent concedes to be an agricultural commodity? The history and scope of the subsidy program which is fully set forth in the petition (essential portions of which are either omitted from or misstated in respondent's brief in opposition), makes it abundantly clear that the purpose of the livestock slaughter subsidy was to stimulate and maintain maximum production, sale and equitable distribution of livestock, and was intended and was in fact for the benefit of the livestock producer. (Pet., 7-11, 23-24.)

As was pointed out in the petition (Pet., 23-24), the livestock slaughter subsidy related not only to the production of livestock but to its sale as well, because it required that in order to obtain payment of the subsidy in full the livestock slaughterer must have purchased the slaughtered livestock within the price ranges established by the subsidy directives and regulations; because the producer received the benefit of the subsidy through the livestock sale and purchase transaction; because it was designed to afford a price support for the producer; and and because it served to induce the producer to sell and the purchaser to buy livestock in normal, legitimate channels.

In order to support its construction of Section 2(m), respondent blandly reads out the key phrase "relating to." The Court of Appeals did likewise. We respectfully urge that the plain force and effect of this statutory phrase cannot be avoided merely by ignoring its existence. For the many reasons we have urged in the petition, Section 2(m) has clear application to the livestock slaughter subsidy here involved. (Pet. 22-24.)

II.

RESPONDENT'S STATEMENT OF THE CASE EITHER IGNORES OR MISSTATES THE FUNDAMENTAL FACTS.

Respondent's statement is both misleading and inaccurate. It is in the pattern of that which respondent presented to the Court of Appeals and which led that Court into the error of reversing the District Court. The alleged case recited in respondent's statement is not the one presented on the record. The very heart of the case, consisting of the basic and controlling directives authorizing and implementing the subsidy program upon which the District Court relied, are passed over and ignored.

The desirability of a succinct reply proscribes us from recounting all of the instances to which we have reference. However, allusion to the most fundamental of the misstatements and omissions will suffice to make our point and to emphasize that reference must be had to our petition for a full, fair, accurate and succinct statement of the case.

The resolution of the issue of jurisdiction on the part of the District Court under Section 2(m) depends upon whether the subsidy was one "relating to the production or sale of agricultural commodities [livestock]." Each of the omissions and other defects in respondent's statement, to which attention is hereinafter called, emphasizes that respondent avoids that issue.

1. In the face of recitals in the basic directives of the Director of Economic Stabilization which created and authorized the subsidy (Pet., pp. 8-9) that the subsidy was designed (a) to insure maximum production of livestock, (b) to maintain livestock prices consistent with the purposes of the stabilization program, (c) to insure equitable

distribution of livestock among slaughterers, (d) to regulate or control purchases of livestock by slaughterers, and (e) to insure that the benefits of the livestock slaughter subsidy would inure to livestock producers, and in the face of a regulation which required the slaughterer to pass the subsidy benefits back to the livestock producer (Pet., p. 10), respondent boldly, repeatedly and without equivocation, refers to the subsidy as a "meat" subsidy. Thus it not only begs the question presented but ignores the controlling factors bearing upon the issue.

2. Accordingly, and contrary to the statement at page 3 of respondent's answer, the subsidy was not one to compensate slaughterers for the 10 per cent roll-back on meats.

3. Respondent says petitioner's suit was one claiming "meat subsidy payments". (Ans., p. 3.) The statement is untrue. The suit was one for a declaratory judgment that Announcement No. 1 was invalid and that petitioner was entitled to receive payment of the unpaid balance of its "livestock slaughter subsidy claims."

4. Respondent makes reference to the initial temporary and exploratory subsidy program of June, 1943 (Ans., p. 3). Respondent then jumps from that point to the lapsing of the Emergency Price Control Act in June, 1946, thus creating the impression that nothing of significance occurred in the interim.

In so doing, respondent omits all reference to the actual implementation and development of the subsidy program in question in October, 1943 when the basic directive of the Director of Economic Stabilization was promulgated. (Pet., pp. 7-11; Appendix, pp. ii-v.) Nor was any reference made to subsequent directives which further implemented the basic directive. (Footnote 4, Pet., p. 10.) In so doing, respondent omits, as did the Circuit Court of Appeals, the very heart of the case.

5. Respondent makes an almost casual reference to the fact the Price Control Act lapsed on June 30, 1946 (Ans., p. 4), but omits to mention the important fact that in the month following the lapsing of the Price Control Act respondent knowingly paid livestock slaughter subsidy claims in full irrespective of whether the slaughterer had meat inventory on hand on June 30, 1946 resulting from slaughter operations prior to that date. (Pet., p. 11.)

6. Respondent recites the fact that the Director of Economic Stabilization ordered restoration of the subsidy program effective September 1, 1946 (Ans., p. 5), but fails to make reference to the fact that in so doing the Director issued a finding that restoration of the subsidy was necessary in order to insure the maximum necessary production and distribution of livestock. (Pet., pp. 11-12.)

7. Respondent states (Ans., p. 4) that it promulgated its Livestock Slaughter Payments Regulation No. 3, but fails to mention that the regulation was subordinate to the directive of October, 1943 and fails to make any mention whatsoever of the terms of the regulation. Thus respondent omits the facts, among others, that the regulation required the slaughterer to pass the benefits of the subsidy on to the livestock producer at the time he purchased the livestock (Pet., p. 10); that it provided for payment of the subsidy "on account of slaughter of livestock"; that it imposed subsidy payment reductions for failure of the slaughterer to pass the subsidy benefits on to the livestock producer at the time of purchase of the livestock (Pet., pp. 10-11); that it provided that termination of the regulation was not to affect "claims on account of livestock slaughter on or before the date of termination" (Pet., p. 30); and that it provided for the making of "Announcements" of the character here involved, as distinguished from so-called regulations or orders which are the words which respondent

employs at this late date to characterize its Announcement. (Pet., p. 27.)

8. Respondent states that meat prices rose sharply following decontrol on October 14, 1946. (Ans., p. 5.) The inference is that petitioner obtained a windfall. Respondent does not mention there was no proof as to when or at what prices petitioner was able ultimately to dispose of carcasses and other meat inventory on hand October 15, 1946. But more important, respondent does not mention that whatever increase in meat prices occurred on and after October 15, 1946 was completely offset by the fact that petitioner was required to sell at low controlled prices and without subsidy or other compensation the equally large meat and livestock inventories it had on hand September 1, 1946, which it had acquired at the high decontrol prices which prevailed during the June 30, 1946-August 31, 1946 decontrol period. One balanced the other. (Rec. 731-732, Findings 11-14.)

9. Respondent states that "meat price controls were in effect only through October 14, 1946". (Ans., p. 5.) No mention is made of price controls on livestock. The inference created is that there were none and that therefore the subsidy was keyed to "meat" prices. The fact is there were livestock price controls consisting of overriding price ceilings on livestock (Pet. p. 10, footnote 4), and a maximum-minimum livestock price range within which slaughterers were required to purchase livestock or suffer reduction of subsidy payments. These maximum-minimum livestock price range controls, which implemented the livestock subsidy directive of October, 1943 and the livestock slaughter regulation, were promulgated to insure that the subsidy benefits inured to the livestock producer at the time of the purchase of the livestock and in advance of the slaughter of the livestock. (Pet., appendix p. iii.)